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13 TICKETMASTER L.L.C.

14 UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA

16 TICKETMASTER L.L.C., a Virginia
17 limited liability company,

18 Plaintiff,

19 vs.

20 RMG TECHNOLOGIES, INC., a
21 Delaware corporation, and DOES 1
22 through 10, inclusive,

23 Defendants.

Case No. CJ 07-2534 ABC(JWJx)

Hon. Jeffrey W. Johnson

DISCOVERY MOTION

**JOINT STIPULATION
REGARDING PLAINTIFF'S
MOTION TO COMPEL
PRODUCTION OF DOCUMENTS;
DECLARATIONS OF ADAM
LIEB, RAAQIM KNIGHT,
CIPRIANO GARIBAY, AND
DAVID TARLOW**

Hearing Date: April 17, 2008

Hearing Time: 2:00 p.m.

Location: Courtroom C, 8th Fl,
Spring St.

Pre-Trial Conf.: September 15, 2008

Trial Date: October 1, 2008

Discovery Cut-Off: May 23, 2008

1 This Joint Stipulation is submitted by the undersigned parties pursuant to
 2 Local Rule 37-2 in connection with Plaintiff Ticketmaster L.L.C.'s ("Plaintiff" or
 3 "Ticketmaster") motion to compel Defendant RMG Technologies, Inc.
 4 ("Defendant" or "RMG") to permit inspection by Ticketmaster of documents and
 5 electronically stored information. In accordance with Local Rule 37-1, the parties
 6 have met and conferred in good faith to resolve this dispute but were unable to do
 7 so.

8 I.

9 **TICKETMASTER'S INTRODUCTORY STATEMENT**

10 Ticketmaster seeks an order requiring RMG to provide amended responses to
 11 Ticketmaster's requests for production and to permit immediate inspection by
 12 Ticketmaster of unprivileged documents, including electronically stored
 13 information, reasonably calculated to lead to the discovery of admissible evidence
 14 and necessary for the prosecution of Ticketmaster's claims. Specifically,
 15 Ticketmaster seeks an order requiring RMG to: (a) produce allegedly "confidential"
 16 materials pursuant to a reasonable protective order; (b) provide amended responses
 17 to the requests; and (c) produce additional unprivileged, non-confidential
 18 documents and electronically stored information covered by the requests set forth
 19 herein.

20 **A. Nature of the Case.**

21 Ticketmaster distributes tickets for live entertainment events to the public
 22 through its "www.ticketmaster.com" website. (Complaint ¶ 3.) In its complaint,
 23 Ticketmaster has alleged that RMG marketed and sold an applications that enable
 24 RMG's customers to use automated devices to enter and navigate Ticketmaster's
 25 website and unfairly procure large quantities of tickets in violation of
 26 Ticketmaster's terms of use, and to conceal from Ticketmaster their use of such
 27 automated devices on Ticketmaster's website. (*Id.* ¶ 4.) These activities constitute
 28 a civil RICO violation, intentional interference with contractual relations, and

1 inducing breach of contract. (*Id.* ¶¶ 72-114.) RMG also uses, or makes available
2 for use, automated devices to circumvent Ticketmaster’s “access control” and
3 “copy protection” systems in violation of the Digital Millennium Copyright Act
4 (17 U.S.C. § 1201), the Computer Fraud and Abuse Act (18 U.S.C. § 1030), and
5 California Penal Code § 502 *et seq.* (*Id.* ¶¶ 51-71.) Additionally, RMG copies
6 copyrighted content, in violation of copyright laws. (*Id.* ¶¶ 46-50.) Finally, RMG
7 fraudulently misrepresented that it would comply with Ticketmaster’s Terms of Use
8 when it accessed Ticketmaster’s website, giving rise to a claim for fraud under
9 California common law. (*Id.* ¶ 115-124.)

10 **B. The Preliminary Injunction and Expedited Discovery Order.**

11 On October 16, 2007, the Court issued a preliminary injunction, enjoining
12 RMG from creating, selling, facilitating the use of, or using “computer programs or
13 other automatic devices to circumvent the technological copy protection systems in
14 Ticketmaster’s website,” or otherwise violating ticketmaster.com’s terms of use.
15 On November 14, 2007, based on concerns raised by Ticketmaster that RMG was
16 violating the Court’s October 16, 2007 preliminary injunction, the Court issued an
17 order permitting Ticketmaster to conduct expedited discovery to ascertain RMG’s
18 compliance with the preliminary injunction (the “Expedited Discovery Order”).
19 Pursuant to the Expedited Discovery Order, RMG produced certain electronic
20 information and documentation necessary for a determination of whether RMG was
21 in contempt of the Court’s preliminary injunction.

22 Prior to the Court’s expedited discovery order, Ticketmaster had propounded
23 requests for production of categories of documents that were broader than those
24 ordered produced by the Expedited Discovery Order. In accordance with the
25 allegations of its Complaint, those requests sought, in general, documents
26 concerning the identity of RMG’s customers, communications with those customers
27 regarding RMG’s products and Ticketmaster’s website, and the steps RMG took to
28 develop and market products intended to be used by customers in conjunction with

1 their purchase of tickets from the Ticketmaster website, including actual visits to
2 the Ticketmaster website. (Declaration of Raaqim Knight (“Knight Decl.”), filed
3 concurrently herewith, ¶ 2.) RMG initially refused to produce a single document in
4 response to these requests. (*Id.* ¶ 3.)

5 **C. RMG’s Responses and Ticketmaster’s Unsuccessful Efforts to Resolve**
6 **Discovery Disputes.**

7 After counsel for Ticketmaster and RMG met and conferred regarding the
8 requests, RMG agreed to provide supplemental responses to the requests and to
9 produce additional documents (documents not produced in response to the
10 Expedited Discovery Order). To that end, RMG was to make an initial production
11 on January 7, 2008, which would be followed by a subsequent production of
12 documents accompanying the supplemental responses due January 29, 2008. (*Id.*, ¶
13 4, Ex. A.) RMG’s supplemental responses and failure to make a the promised
14 second production of documents are the subjects of this motion.

15 RMG’s supplemental responses mischaracterize Ticketmaster’s requests,
16 narrowing the requests in some instances, and expanding them in other instances.
17 RMG adopted interpretations of requests intended to morph the propounded
18 requests into new requests. RMG also asserted various unfounded objections to
19 Ticketmaster’s requests. More problematic, however, is RMG’s refusal to produce
20 categories of documents based on those objections. RMG previously stated it
21 would produce additional documents in response to certain requests, however, no
22 documents have been produced. Meanwhile, documents already in Ticketmaster’s
23 possession indicate that RMG is still in possession of additional responsive
24 documents.

25 Further, RMG is needlessly impeding discovery. For example, RMG refused
26 to produce documents on confidentiality grounds, yet has refused to negotiate a
27 stipulated protective order, or even to comment on a draft protective order that was
28 provided more than a month ago by Ticketmaster. (Knight Decl., ¶¶ 8 & 9, Exs. B

1 & C.) Meanwhile, the expedited discovery order entered on November 14, 2007
 2 date provides protection for RMG's allegedly confidential documents.¹

3 **D. The Discovery Cut-off and Need for a Discovery Order.**

4 The parties are now only two months away from the May 23, 2008 discovery
 5 cut-off in this case, and many requested documents that are relevant and obviously
 6 within RMG's possession, custody or control have yet to be produced.
 7 Ticketmaster requests that the Court issue an order requiring RMG to produce
 8 additional documents and provide amended responses to the requests.

9 **II.**

10 **RMG'S INTRODUCTORY STATEMENT**

11 This is the ultimate case of hypocrisy. Ticketmaster, the Plaintiff in this
 12 matter, is actually the party withholding requested and relevant documents. It is
 13 Ticketmaster who is asserting frivolous objections and dilatory tactics all to deprive
 14 RMG of its right to defend itself in this action. Pointedly, pursuant to
 15 Ticketmaster's Request for Production of Documents dated October 15, 2007 and
 16 the expedited discovery order of the court dated November 9, 2007 RMG has
 17 provided to Ticketmaster significant and proprietary documents related to its
 18 software products, including, the source code that drives its software product.
 19 Nevertheless, Plaintiff has refused to provide any documents whatsoever to RMG
 20 notwithstanding the fact that RMG propounded its Request for Production on
 21 December 7, 2007. What makes Ticketmaster's actions even more egregious, is
 22 that it specifically requested an extension of time with which to respond to RMG's
 23 discovery request, only to then withhold documents. As of the date of RMG's
 24 response to this stipulation, RMG had not received one single piece of paper which
 25 was responsive to any of its document requests.

26
 27 ¹ Ticketmaster is separately moving for a protective order to govern the production
 28 of trade secrets and other confidential information.

1 Documents which have been withheld by Ticketmaster are highly relevant to
2 RMG's defenses in this matter. Specifically, Ticketmaster has claimed that it
3 sustained damages in the form of increased costs of internet security. In response to
4 this allegation, RMG requested documents concerning Ticketmaster's convenience
5 charges. RMG contends that these documents would show whether Ticketmaster
6 has actually passed off the costs of internet security to its customers, thereby,
7 negating any such damages. Notwithstanding the obvious relevance, and clear need
8 for this information, Ticketmaster refuses to produce any such documents under
9 any condition. Moreover, Ticketmaster's attorneys, at the meet and confer of
10 counsel on March 5, 2008 told RMG's counsel that RMG would need to make a
11 motion to compel in order to obtain this information. When RMG's counsel asked
12 Ticketmaster's counsel why it was refusing to produce documents which clearly are
13 relevant to the matter, Ticketmaster's attorney claimed that he was told by partners
14 at his firm not to compromise on these requests.

15 Ticketmaster has failed to produce any documents which support its loss of
16 goodwill claim, even though same have been requested. When RMG's counsel
17 confronted Ticketmaster's counsel with the fact that said documents are relevant to
18 disproving Ticketmaster's claims, Ticketmaster's counsel agreed that they were
19 relevant, yet refused to produce them.

20 On March 5, 2008, when counsel for Ticketmaster and RMG met and
21 conferred regarding *both parties* inadequate responses to discovery request,
22 Ticketmaster's counsel requested that RMG provide further discovery responses by
23 March 7, 2008. Upon RMG's counsel's inquiry as to when Ticketmaster would
24 provide supplemental responses, Ticketmaster's counsel stated that Ticketmaster
25 would be unable to provide a further response for at least 2 to 3 weeks, maybe
26 longer; he refused to confirm any date for further responses or document
27 production. RMG's counsel stated they would not be able to provide responses by
28 March 7, 2008, as RMG's counsel had an appellate brief due in another matter on

March 14, 2008, and a jury trial scheduled to begin on March 17, 2008. RMG's counsel suggested that the parties decide on another due date for both of their further responses. Ticketmaster's counsel refused to commit to a date for his client to provide further responses. Accordingly, the parties left the issue open. RMG's counsel did not anticipate that Ticketmaster would serve this stipulation upon it on March 12, 2008, especially since Ticketmaster has not provided any further responses, and still is withholding all documents in this matter.

Based upon the foregoing, it is respectfully submitted that it is Ticketmaster who must be compelled to provide another response to RMG's document requests, and to immediately produce documents.

III.

JOINT SPECIFICATION OF ISSUES IN DISPUTE

A. RMG's Withholding of Documents on the Basis of Confidentiality and Simultaneous Refusal to Enter a Stipulated Protective Order (Document Request Nos. 11, 12, 32, 33, 34, 36, and 39).

REQUEST FOR PRODUCTION OF DOCUMENTS NO.: 11

All Documents relating to how You obtained or developed Automated Devices and software used to buy Tickets.

RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS NO.: 11

Responding Party objects to this request as it is overbroad with respect to the definition of Automated Devices." Responding Party objects to this request as it is oppressive and burdensome. Responding Party objects to this request as it seeks information which constitutes "trade secrets" or other "confidential research, development or commercial information" pursuant to Rule 26(c)(7), and would only produce them pursuant to a protective order by the Court or a stipulated protective order.

REQUEST FOR PRODUCTION OF DOCUMENTS NO.: 12

All Documents relating to whom You transferred Automated Devices and software used to buy Tickets.

RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS NO.: 12

Responding Party objects to this request as it is overbroad with respect the definition of "Automated Devices." Responding

1 Party objects to this request as it seeks information which
 2 constitutes "trade secrets" or "commercial information"
 3 pursuant to Rule 26(c)(7). Notwithstanding these objections,
 4 Responding Party is unable to comply with this request as it has
 not transferred any automated devices and software to any
 person or entity to purchase Tickets.

5 REQUEST FOR PRODUCTION OF DOCUMENTS NO.: 32

6 All documents that identify all persons to whom You sold,
 7 leased, rented, licensed or otherwise provided any and all
 8 products or services mentioned in Exhibit 1 of Ticketmaster's
Motion for Preliminary Injunction filed in this case ("MPI Exh.
 1") (attached hereto).

9 RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS NO.: 32

10 Responding Party objects to this request as exceeding
 11 permissible discovery, as it is irrelevant to the issues in the
 instant matter. Responding Party objects to this request as it
 12 seeks information which constitutes "trade secrets" or other
 "confidential research, development or commercial information"
 13 pursuant to Rule 26(c)(7). Responding Party objects to this
 request as it seeks confidential financial information of third
 parties.

14 REQUEST FOR PRODUCTION OF DOCUMENTS NO.: 33

15 All Communications between You and any Person relating to
 16 the products or services mentioned in MPI Exh. 1.

17 RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS NO.: 33

18 Responding Party objects to this request as exceeding
 19 permissible discovery, as it is irrelevant to the issues in the
 instant matter. Responding Party objects to this request as it
 20 seeks information which constitutes "trade secrets" or other
 "confidential research, development or commercial information"
 21 pursuant to Rule 26(c)(7). Responding Party objects to this
 request as it seeks confidential financial information of third
 22 parties.

23 REQUEST FOR PRODUCTION OF DOCUMENTS NO.: 34

24 All Documents, including but not limited to financial records,
 25 relating to all revenue You have received relating to all products
 and services mentioned in MPI Exh. 1.

26 RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS NO.: 34

27 Responding Party objects to this request as exceeding
 28 permissible discovery, as it is irrelevant to the issues in the

instant matter. Responding Party objects to this request as it seeks information which constitutes “trade secrets” or other “confidential research, development or commercial information” pursuant to Rule 26(c)(7). Responding Party objects to this request as it seeks confidential financial information of third parties.

REQUEST FOR PRODUCTION OF DOCUMENTS NO.: 36

All Documents relating to all agreements You entered into with any Person to whom You sold, leased, rented, licensed, or otherwise provided an Automated Device(s).

RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS NO.: 36

Responding Party objects to this request as it is overbroad with respect to the term “Automated Devices.” Responding Party objects to this request as exceeding permissible discovery, as it is irrelevant to the issues in the instant matter, as it is not limited to Ticketmaster. Responding Party objects to this request as it seeks information which constitutes “trade secrets” or other “confidential research, development or commercial information” pursuant to Rule 26(c)(7). Responding Party objects to this request as it seeks confidential financial information of third parties.

REQUEST FOR PRODUCTION OF DOCUMENTS NO.: 39

All Communications You have had with any Person to whom You sold, leased, rented, or licensed or otherwise made available any products or services mentioned in MPI Exh. 1.

RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS NO.: 39

Responding Party objects to this request as exceeding permissible discovery, as it is irrelevant to the issues in the instant matter. Responding Party objects to this request as it seeks information which constitutes “trade secrets” or other “confidential research, development or commercial information” pursuant to Rule 26(c)(7). Responding party objects to this request as it seeks confidential financial information of third parties. Responding Party objects to this request as it seeks information regarding Triple Play and Purchasemaster, which are unrelated to this lawsuit.

1. Ticketmaster’s Contentions and Points and Authorities.

Ticketmaster is entitled to discovery of “any matter, not privileged, that is relevant to the claim or defense of that party.” *See* Fed.R.Civ.P. 26(b)(1). “It is a common principle that the rules of discovery are to be broadly and liberally

1 construed so as to permit the discovery of any information which is relevant and is
 2 reasonably calculated to lead to the discovery of admissible evidence.” *Willis v.*
 3 *Ritter* (S.D.Cal. 2007) 2007 WL 2455873, *2 (citing Fed.R.Civ.P. 26(b)(2);
 4 *Hickman v. Taylor* (1947) 329 U.S. 495, 507). Each of these requests is relevant to
 5 the claims and defenses at issue in this matter.

6 Ticketmaster alleges that RMG developed, and is marketing and selling,
 7 computer programs that enable its ticket broker customers to access Ticketmaster’s
 8 website, block access to the best tickets, copy purchase pages, and quickly purchase
 9 large quantities of tickets faster than human customers can, in violation of
 10 www.ticketmaster.com’s terms of use. (Complaint ¶ 4.) Accordingly, the requests
 11 at issue seek the identity of RMG’s customers, communications with those
 12 customers regarding RMG’s products and Ticketmaster’s website, and the steps
 13 RMG took to development a product intended to be used by customers in
 14 conjunction with their use of the Ticketmaster website, including actual visits to the
 15 Ticketmaster website.

16 RMG has objected that the requests seek information which constitutes “trade
 17 secrets” or other “confidential research, development or commercial information,”
 18 and has refused to produce such documents, while simultaneously refusing to
 19 stipulate to a protective order. The United States Constitution and California
 20 Constitution provide protection for certain private and proprietary information,
 21 including confidential business records and trade secrets. However, the right of
 22 privacy is not an absolute bar to discovery. Rather, courts balance the need for the
 23 information against the claimed privacy right. *Ragge v. MCA/Universal Studios*
 24 (C.D.Cal. 1995) 165 FRD 601, 604 (right of privacy under both U.S. and California
 25 constitutions may be invaded for litigation purposes); *Rubin v. Regents of Univ. of*
 26 *Calif.* (N.D.Cal. 1986) 114 F.R.D. 1, 2.

27 Protective orders provide a safeguard for the confidential information of
 28 parties and other persons in light of the otherwise broad reach of discovery.

1 Fed.R.Civ.P. 26(c), Advisory Comm. Notes (1970); *United States v. CBS, Inc.* (9th
 2 Cir. 1982) 666 F.2d 364, 368–369. The court may issue protective orders limiting
 3 disclosure of trade secrets “or other confidential research, development, or
 4 commercial information.” Fed.R.Civ.P. 26(c)(1)(G). The court may order that the
 5 trade secret or commercial information not be revealed or be revealed only in a
 6 specified way. Fed.R.Civ.P. 26(c)(1)(G). Disclosure may also be ordered to
 7 opposing party’s trial attorney only – and not to the opposing party (known as an
 8 “attorney eyes only” or “counsel only” restriction). *Safe Flight Instrument Corp. v.*
 9 *Sundstrand Data Control Inc.* (D.Del. 1988) 682 F.Supp. 20, 22.

10 The party seeking a protective order (i.e., the party opposing discovery) must
 11 show (a) that the information is a “trade secret or other confidential research,
 12 development, or commercial information,” under FRCP 26(c)(1)(G) and (b) that its
 13 disclosure would be harmful to the party’s interest in the property. *In re “Agent*
 14 *Orange” Prod. Liab. Litig.* (E.D.N.Y. 1985) 104 FRD 559, 574; *and see Centurion*
 15 *Indus., Inc. v. Warren Steurer & Assocs.* (10th Cir. 1981) 665 F.2d 323, 326.
 16 Where trade secrets are involved, the court will balance the risk of disclosure to
 17 competitors against the risk that a protective order will impair prosecution or
 18 defense of the claims. *Brown Bag Software v. Symantec Corp.* (9th Cir. 1992) 960
 19 F.2d 1465, 1470.

20 Indeed, parties frequently stipulate to protective orders protecting against
 21 disclosure of information obtained through disclosure and discovery. William W.
 22 Schwarzer, A. Wallace Tashima & James M. Wagstaffe, *California Practice Guide,*
 23 *Federal Civil Procedure Before Trial*, ch. 11(III)-C, ¶ 11:1126, at 11-121 (2007)
 24 (citing *SEC v. TheStreet.Com* (2nd Cir. 2001) 273 F3d 222, 225—stipulated order
 25 gave each party the right to designate material as “confidential”).

26 Assuming, *arguendo*, that the information sought by the requests encompass
 27 “private” or “confidential” information a protective order would be warranted here.²

28 ² Here, the information sought by the requests may not even qualify for trade secret

1 Ticketmaster's need for the information sought is great as the requests seek the
 2 identity of RMG's customers, communications with those customers regarding
 3 RMG's products and Ticketmaster's website, and the steps RMG took to
 4 development and market products intended to be used by customers in conjunction
 5 with their use of the Ticketmaster website, including actual visits to the
 6 Ticketmaster website. Without the ability to review these documents,
 7 Ticketmaster's prosecution of its claims will be unfairly and substantially impaired.

8 Further, Ticketmaster is willing to abide by a protective order protecting
 9 RMG's "confidential" information and has offered to enter into a stipulated
 10 protective order designating appropriate documents as "confidential." However,
 11 RMG never provided any comments or otherwise responded to Ticketmaster's
 12 proposed protective order. (Knight Decl. ¶ 9.)

13 RMG has no justification for its refusal to enter into a protective order.
 14 Indeed, in the mandatory meeting of counsel, RMG's counsel stated RMG simply
 15 would not enter into a stipulated protective order with Ticketmaster. (*Id.* ¶ 12.)

16 The documents sought by these requests are relevant and highly necessary for
 17 the prosecution of Ticketmaster's claim. Meanwhile, production of these

18
 19 protection. There is little to no danger that Ticketmaster would misappropriate
 20 RMG's trade secrets for its own commercial use, as Ticketmaster is not a
 21 competitor of RMG. Ticketmaster obviously is not in the business of providing
 22 ticket brokers with software to circumvent the copy protection systems on
 23 Ticketmaster's own website and making those materials available to Ticketmaster
 24 creates no risk that Ticketmaster will distribute RMG's allegedly "trade secret"
 25 code to other companies so that they can create additional products to defeat
 26 Ticketmaster's security systems. Thus, there is no danger that disclosure of the
 27 information sought would be harmful to RMG's interest in the information.
 28 Moreover, infringing products are not entitled to intellectual property protection on
 policy grounds. *See, e.g., Palladium Music, Inc. v. EatSleepMusic, Inc.*, 398 F.3d
 1193, 1197 (10th Cir. 2005) (copyright registration for infringing work invalid);
Mulcahy v. Cheetah Learning LLC, 386 F.3d 849, 852 (8th Cir. 2002)
 (unauthorized derivative work not entitled to copyright protection); *Anderson v.*
Stallone, 1989 WL 206431, *8 9 (C.D. Cal 1989) (same). RMG's products should
 not be entitled to "trade secret" protection (even if they contain content otherwise
 subject to protection) because this Court has already ruled that RMG's products and
 services likely are infringing in granting Ticketmaster's Motion for Preliminary
 Injunction.

1 documents subject to a protective order should allay any of RMG's concerns
2 regarding the confidentiality of the information sought. For these reasons, the
3 Court should compel production of all documents responsive to Request Nos. 11,
4 12, 32, 33, 34, 36, and 39, subject to an appropriate protective order entered by the
5 Court.

6 **2. RMG's Contentions and Points and Authorities.**

7 In November of 2007, Ticketmaster brought an *ex parte* application for
8 expedited discovery on the basis that RMG was violating the preliminary injunction
9 in this matter. RMG agreed to produce the discovery that Ticketmaster had sought,
10 but requested that Ticketmaster enter into a stipulated protective order regarding
11 same which would prevent employees of Ticketmaster from viewing RMG's
12 confidential and proprietary trade secrets. RMG lodged the proposed protective
13 order with the Court. Ticketmaster refused to enter into the stipulated protective
14 order. The Court granted Ticketmaster's *ex parte* application, but did not grant
15 RMG's request for a protective order. The only limitation that the court put on
16 Ticketmaster in handling RMG's "trade secrets" and "confidential" information
17 was that the information only be used: (1) in litigation against RMG and against
18 those who use RMG's products and services; and (2) to maintain the security of
19 Ticketmaster's website. Finally, the court ordered that said materials could only be
20 disclosed to Ticketmaster's information technology, legal personnel, and outside
21 legal counsel, staff, experts and consultants.

22 Accordingly, all of the proprietary information of RMG, which was provided
23 to Ticketmaster are in the possession, custody and control of Ticketmaster's
24 Information Technology Department, including, but not limited to RMG's source
25 code which drives its ticket purchasing product.

26 Now that there have been discovery requests propounded upon Ticketmaster,
27 it is now claiming that it is amenable to entering into a protective order. However,
28 Ticketmaster is demanding that RMG's employees not be permitted to view its

1 sensitive information. On the basis that Ticketmaster is now amenable to entering
 2 into a stipulated protective order, Ticketmaster claims that RMG should be
 3 compelled to turn over its “proprietary” and “confidential information.” RMG is
 4 simply not amenable to entering into the protective order proposed by Ticketmaster.
 5 First and foremost, RMG is a small company with extremely limited resources.
 6 Some of its employees are software designers. Thus, it would be much more
 7 economical and efficient for RMG’s staff to review Ticketmaster’s technical
 8 documents, than for RMG to retain an expert to review same. Thus, RMG would
 9 be amenable to entering into a stipulated protective order which has the same terms
 10 as that of the order of the court dated November 9, 2007. Those terms being that:
 11 (1) Ticketmaster’s “confidential” information may be used by RMG for the purpose
 12 of defending against this lawsuit; and (2) said information may be disclosed only to
 13 RMG’s Information Technology employees, and outside legal counsel, staff and
 14 experts, if any are retained. In the event that this condition is agreeable to
 15 Ticketmaster, RMG would be willing to withdraw its objections based upon Rule
 16 26(c)(7). Had Ticketmaster simply given RMG’s counsel sufficient time to meet
 17 with its client regarding same, rather than imposing a stringent and draconian two
 18 day deadline for further responses, their motion on this issue could have been
 19 avoided.

20 **3. Proposed Resolutions During the Conference of Counsel**

21 **a. Ticketmaster’s Proposed Resolution.**

22 At the mandatory conference of counsel, counsel for Ticketmaster proposed
 23 that the parties enter into a mutually agreeable stipulated protective order, thus
 24 allaying RMG’s confidentiality concerns. (*Id.* ¶ 12.) However, counsel for RMG
 25 stated that RMG simply would not enter into any stipulated protective order with
 26 Ticketmaster. (*Id.*)

27 **b. RMG’s Proposed Resolution.**

28 RMG proposes that the parties enter into a stipulation consistent with the

1 order for expedited discovery of the Court dated November 9, 2007, whereby any
 2 materials designated as “trade secrets” or “confidential information” be used by the
 3 opposing parties only for litigation purposes against each other, and that the “trade
 4 secrets” or confidential materials be disclosed only to the parties information
 5 technology personnel, legal personnel, outside legal counsel, staff, experts and
 6 consultants for such purposes.

7 **B. RMG’s Failure to Produce Responsive Documents That It Clearly**
 8 **Possesses (Document Request Nos. 8, 26, 30, 35, 50 and 54).**

9 **1. Document Request No. 8.**

10 REQUEST FOR PRODUCTION OF DOCUMENTS NO.: 8

11 All Documents relating to any Automated Devices used to
 12 access Ticketmaster’s website and buy Tickets.

13 RESPONSE TO REQUEST FOR PRODUCTION OF
 14 DOCUMENTS NO.: 8

15 Responding Party objects to this request as it is overbroad with
 16 respect to the definition of “Automated Devices.” Responding
 17 Party objects to this request as being overbroad generally.
 18 Notwithstanding this objection, after a diligent search and
 19 reasonable inquiry, Responding Party is unable to comply with
 20 this request, as Responding Party does not have any records
 21 reflecting its purchase of any Tickets from Ticketmaster’s
 22 website in its possession, custody or control. However, without
 23 waiving the aforesaid objections, Responding Party has
 24 already produced documents concerning its Ticket Broker
 25 Acquisition Tool (“TBAT”), which is the only software program
 26 that Responding Party has developed and marketed which can
 27 be used on the ticketmaster.com website, and Ticketmaster
 28 already has the technical documents concerning same in its
 possession, custody and control.

a. Ticketmaster’s Contentions and Points and Authorities.

In response to Request No. 8, which seeks all documents relating to any
 Automated Devices used to access Ticketmaster’s website and buy tickets, RMG
 indicated that it already produced documents concerning its Ticket Broker
 Acquisition Tool (“TBAT”) and related technical documents, and that there are no
 other responsive documents. However, a review of the documents produced by
 RMG reveals that not all documents responsive to this request have been produced.

1 For example, RMG has produced source code and “jar” files concerning
 2 TBAT. (Declaration of Adam Lieb (“Lieb Decl.”) ¶ 6.) However, RMG did not
 3 produce the executables that would have been provided to RMG’s customers in
 4 order for them to run TBAT – i.e., installer, any help or documentation files. (*Id.*)
 5 In essence, RMG produced a version of TBAT that most of its customers would be
 6 unable to run. (*Id.*) Because RMG obviously provided customers with a product
 7 they could actually use (i.e., TBAT and its executables), and those documents
 8 would “relate” to TBAT, which is an “Automated Device,” RMG should have
 9 produced the customer-friendly executables. *See* Fed.R.Civ.P. 34(b), Adv. Comm.
 10 Note to 2006 Amendment (If necessary to enable the requesting party to use the
 11 information provided, “the responding party may need to provide some reasonable
 12 amount of technical support, information on application software, or other
 13 reasonable assistance....”); Fed.R.Civ.P. 34(a), Adv. Comm. Note to 2006
 14 Amendment (“[A] Rule 34 request for production of ‘documents’ should be
 15 understood to encompass, and the response should include, electronically stored
 16 information....”). Similarly, RMG did not produce any bug database or statements
 17 of product capabilities, which would be responsive and which RMG likely
 18 possesses. (Lieb Decl. ¶ 7.)

19 In addition, RMG produced documents evidencing multiple versions of
 20 TBAT, its components, and associated applications. (*Id.* ¶ 8) Therefore,
 21 documents reflecting, constituting, referencing and/or discussing the differences
 22 between the separate versions and RMG’s reasons for the differences would also be
 23 responsive to this request. Documents reflecting the date upon which each version
 24 became available for use would also be responsive. At a minimum, RMG should
 25 have produced internal communications regarding these topics. *See Rowe*
 26 *Entertainment, Inc. v. William Morris Agency, Inc.* (S.D.N.Y. 2002) 205 FRD 421,
 27 428 (A party’s e-mail communications relating to its claims or defenses are a proper
 28 subject for a Rule 34 request). However, no such documents were produced. It is

1 not plausible that RMG developed multiple versions of TBAT, over a several-year
2 period and does not possess any of the missing documents. Rather, it appears that
3 RMG has adopted an overly narrow interpretation of the scope of this request in
4 order to evade its discovery obligations while feigning compliance.

5 Ticketmaster's prosecution of its claims against RMG would suffer actual
6 and substantial prejudice from the denial of the documents sought by this request –
7 those related to RMG's automated devices – as these documents undoubtedly
8 contain information going to the heart of Ticketmaster's claims. For these reasons,
9 the Court should compel production of all documents responsive to Request No 8.

10 b. RMG's Contentions and Points and Authorities.

11 First and foremost, RMG denies that it has ever produced "Automated
12 Devices" as set forth in the definition provided by Ticketmaster, which states that
13 same are computer programs designed to: (a) make multiple automatic ticket
14 purchase requests or otherwise purchase tickets from www.ticketmaster.com faster
15 than a person who uses a traditional Web browser such as Microsoft Internet
16 Explorer or Firefox and manually enters instructions that allow him or her to
17 proceed from the www.ticketmaster.com home page to the various Web pages
18 needed to purchase tickets; (b) circumvent www.ticketmaster.com's CAPTCHA
19 and other technological measures that are intended to regulate a user's ticket
20 purchasing experience on www.ticketmaster.com; (c) conceal the identity of the
21 person who purchases tickets for www.ticketmaster.com by concealing the person's
22 true IP address or through other means; (d) circumvent www.ticketmaster.com's
23 ticket purchase limits; (e) "deep-link" to www.ticketmaster.com web pages; (f) give
24 the user an advantage over other people who purchase tickets from
25 www.ticketmaster.com; or (g) in any other manner which seeks to facilitate
26 commercial use of www.ticketmaster.com by the users. Notwithstanding the fact
27 that RMG denies that its products constitute "Automated Devices," RMG, in an
28 attempt to be forthright, has indicated in this response that the only software

1 program that it has developed which can be used on ticketmaster.com, is the TBAT
 2 program. Pointedly, RMG already provided to Ticketmaster the source code and
 3 other technical documents in response to the order for expedited discovery.

4 c. Proposed Resolutions During the Conference of Counsel.

5 (1) Ticketmaster's Proposed Resolution.

6 At the mandatory meeting of counsel, counsel for RMG indicated that no
 7 documents responsive to this request were withheld. (Knight Decl. ¶ 13.)
 8 However, counsel for RMG explained that RMG had interpreted the definition of
 9 "Tickets" to exclude tickets not purchased by RMG or on RMG's behalf. (*Id.*)
 10 Counsel for Ticketmaster indicated that the request was not intended to be limited
 11 in that fashion and offered to amend the request by removing the phrase "and buy
 12 Tickets." (*Id.*) Counsel for RMG indicated that RMG would search again for
 13 responsive documents in light Ticketmaster's broader interpretation. (*Id.*)
 14 However, given the approaching discovery cut-off in this matter, counsel for
 15 Ticketmaster could only grant RMG until March 7, 2008, to provide a supplemental
 16 response. (*Id.*) To date, RMG still has not provided a supplemental response. (*Id.*)

17 (2) RMG's Proposed Resolution.

18 RMG stands by the fact that it has not produced "Automated Devices," thus it
 19 is unable to give a further response to this request.

20 **2. Document Request No. 30.**

21 REQUEST FOR PRODUCTION OF DOCUMENTS NO.: 30

22 All Communications between you and any Person relating to the
 23 sale or transfer of Tickets.

24 RESPONSE TO REQUEST FOR PRODUCTION OF
DOCUMENTS NO.: 30

25 Responding Party objects to this request as it is vague,
 26 ambiguous and unintelligible as to the meaning of the word
 27 "you." Responding Party objects to this request as it is vague,
 28 ambiguous and overbroad. Notwithstanding the foregoing
 objection, after a diligent search and reasonable inquiry,
 Responding Party is unable to comply with this request as no
 such documents exist, as Responding Part is not in the business

1 of the sale or transfer of Tickets, but in the software
2 development business.

3 a. Ticketmaster's Contentions and Points and Authorities.

4 In response to Request No. 30, which seeks all communications between
5 RMG and any person relating to the sale or transfer of tickets, RMG stated that it
6 could not comply with this request because it is not in the business of the sale or
7 transfer of tickets. This is unresponsive, as RMG does not have to be "in the
8 business" of the sale or transfer of tickets to communicate with someone about that
9 topic. Thus, any communications that RMG had with its customers (who are in the
10 business of selling tickets) regarding its customers' sale of tickets, for example,
11 would be responsive to this request. A party's e-mail communications relating to
12 claims or defenses are a proper subject for a Rule 34 request. *Rowe Entertainment*,
13 205 F.R.D. at 428. Given that RMG sold software primarily used by persons "in
14 the business" of selling tickets, it follows that it had some communication with its
15 customers regarding this topic (if for no other reason than to discuss how RMG's
16 products might work in concert with or conflict with a ticket broker customer's
17 plans to sell tickets).

18 Ticketmaster's prosecution of its claims against RMG would suffer actual
19 and substantial prejudice from the denial of the documents sought by this request –
20 communications between RMG and others relating to the sale of tickets purchased
21 from Ticketmaster's website – as such communications undoubtedly contain
22 admissions and other information going to the heart of Ticketmaster's claims. For
23 these reasons, the Court should compel production of all documents responsive to
24 Request No. 30.

25 b. RMG's Contentions and Points and Authorities.

26 In RMG's original response to this request, it responded, among other things,
27 that "after a diligent search and reasonable inquiry, Responding Party is unable to
28 comply with this request as no such documents exist." In a meet and confer

1 conference with counsel from Ticketmaster on December 7, 2007, Ticketmaster's
 2 counsel requested that RMG supplement the response to state why no such
 3 documents exist. RMG therefore, supplemented the response and added the reason
 4 why it believed no such documents exist. Now Ticketmaster disingenuously moves
 5 to compel a further response because they allege that the response is unresponsive.
 6 It is nothing of the sort. The response states that RMG is unable to comply with the
 7 request after a diligent search. That response is responsive.

8 Moreover, in its Request for Production of Documents Ticketmaster provided
 9 its own definition for the term "Tickets" whereby it states that Tickets "means
 10 tickets purchased by You, or on Your behalf, at Ticketmaster's website
 11 (www.ticketmaster.com) from January 1, 2002 to present." As RMG is not in the
 12 business of selling tickets, logic would dictate that they would not possess
 13 documents which showed communications regarding the sale or transfer of tickets
 14 purchased by or on behalf of RMG. Ticketmaster's motion on this ground is
 15 simply frivolous.

16 c. Proposed Resolutions During the Conference of Counsel.

17 (1) Ticketmaster's Proposed Resolution.

18 At the mandatory meeting of counsel, counsel for RMG indicated that it
 19 interpreted the definition of "Tickets" to exclude tickets not purchased by RMG or
 20 on RMG's behalf, and thus had no responsive documents. (Knight Decl. ¶ 13.)
 21 Counsel for Ticketmaster indicated that the request was not intended to be limited
 22 in that fashion and offered to amend the request by removing the phrase "and buy
 23 Tickets." (*Id.*) Counsel for RMG indicated that RMG would search again for
 24 responsive documents in light Ticketmaster's broader interpretation. (*Id.*)
 25 However, given the approaching discovery cut-off in this matter, counsel for
 26 Ticketmaster could only grant RMG until March 7, 2008, to provide a supplemental
 27 response. (*Id.*) To date, RMG still has not provided a supplemental response. (*Id.*)
 28

(2) RMG's Proposed Resolution.

At the meet and confer, Ticketmaster's counsel accused RMG of withholding documents, and then admitted that Ticketmaster's definition of "Tickets," which was the basis of the request, was limited to tickets purchased by or on behalf of RMG. Ticketmaster's counsel then suggested that the parties stipulate to change the definition of Tickets, and that RMG provide a supplemental response within two (2) days or else Ticketmaster would bring a motion to compel.

RMG proposed that as the discovery cut off date was ten weeks away, and no request had ever been made of RMG to produce documents regarding its communications relating to the sale or transfer of all tickets— but only "Tickets" as specially defined by Ticketmaster—that Ticketmaster propound a second request for the production of documents. RMG's counsel explained that it is patently unfair for Ticketmaster to demand documents which it has never requested be produced on two (2) days notice. Ticketmaster's counsel said rather than propounding a new request, it would be making a motion to compel.

3. Document Request No. 35.REQUEST FOR PRODUCTION OF DOCUMENTS NO.: 35

All Documents relating to the source code, object code, HTML and other computer code for all computer programs identified in MP Exh. 1.

RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS NO.: 35

Responding Party objects to this request as it seeks information which exceeds permissible discovery with respect to Triple play and Purchasemaster, as same are unrelated to the issues in this lawsuit. Notwithstanding the foregoing objections, and without waiving same, Responding Party has produced documents concerning the HTML and source code for RMG's subsequent "TBAT" product, "Super Proxy" and other products and services used to facilitate purchases on ticketmaster.com.

a. Ticketmaster's Contentions and Points and Authorities.

In response to Request No. 35, which seeks all documents relating to the source code, object code, HTML and other computer code for all computer

1 programs identified in MPI Exh. 1³, RMG responded that it has “produced
 2 documents concerning the HTML and source code for RMG’s subsequent ‘TBAT’
 3 product, ‘Super Proxy’ and other products and services used to facilitate purchases
 4 on ticketmaster.com.” This response is deficient on its face, as it does not indicate
 5 that RMG has produced documents relating to all of the programs identified in MPI
 6 Exh. 1. RMG may not unilaterally declare which programs it believes it should be
 7 concerned with when responding to this request. Rather, for each item or category
 8 covered by a request, RMG must either state that inspection will be permitted as
 9 requested, or state an objection to the request, including the reasons. Fed.R.Civ.P.
 10 34(b). Therefore, RMG’s alleged production of documents relating to TBAT,
 11 Super Proxy and “other products and services” is incomplete.

12 Many, if not all, of the other programs identified in Exh. 1 are designed to
 13 work in conjunction with TBAT to maximize the effectiveness of RMG’s “stealth
 14 technology.” (Lieb Decl. ¶ 13.) Thus, documents relating to these other programs
 15 are clearly relevant and likely to lead to the discovery of admissible evidence in this
 16 case. Meanwhile, a review of the documents actually produced reveals that RMG,
 17 in fact, did not produce any documents relating to several of the computer programs
 18 identified on MPI Exh. 1.⁴ (*Id.*) At a minimum, RMG should have produced
 19 internal communications regarding these programs. A party’s e-mail
 20 communications, for example, relating to claims or defenses are a proper subject for
 21 a Rule 34 request. *Rowe Entertainment*, 205 F.R.D. at 428.

22 Ticketmaster’s prosecution of its claims against RMG would suffer actual
 23 and substantial prejudice from the denial of the documents sought by this request –

24 ³ The computer programs identified in MPI Exh. 1 are: (a) Onsale List; (b)
 25 Universal Tix; (c) TBAT; (d) Triple Play; (e) OCR; (f) Auto Worker; (g) RPS; (h)
 26 ANSWER; (i) TBAT Plus; (j) TBAT Pro; (k) isl; (l) that-tm; (m) that-tc; (n)
 Browser Proxy; (o) TBATTHREELIC; (p) that-tc-mlb; (q) TBAT Report; (r)
 release; (s) TBATSINGLIC; (t) that-tm-uk; and (u) Ticket Center.

27 ⁴ The programs for which no documents were produced are: (a) Universal Tix; (b)
 28 Triple Play; (c) TBAT Plus; (d) TBAT Pro; (e) isl; (f) TBATTHREELIC; (g)
 release; and (h) TBATSINGLIC. (Lieb Decl., ¶ 13.)

documents relating to the computer code for programs designed to maximize the effectiveness of RMG's "stealth technology" – as the requested documents are highly relevant to Ticketmaster's claims. For these reasons, the Court should compel production of all documents responsive to Request No 35.

b. RMG's Contentions and Points and Authorities.

At the meet and confer between counsel, RMG's counsel specifically stated that it was his understanding that all documents which were responsive to this request had been provided, but that he would go back to RMG, ask if there were any documents being withheld, and if so, RMG would produce same.

c. Proposed Resolutions During the Conference of Counsel

(1) Ticketmaster's Proposed Resolution.

At the mandatory meeting of counsel, counsel for RMG indicated that, despite only expressly naming TBAT and Super Proxy, it had, in fact, produced all responsive documents in its possession relating to all of the items listed on MPI Exh. 1. (Knight Decl. ¶ 15.) Counsel for RMG indicated that it would supplement its response to Request No. 35 to reflect such a comprehensive production. (*Id.*) However, given the approaching discovery cut-off in this matter, counsel for Ticketmaster could only grant RMG until March 7, 2008, to provide a supplemental response. (*Id.*) To date, RMG still has not provided a supplemental response. (*Id.*)

(2) RMG's Proposed Resolution.

Counsel for RMG proposed at the meeting that he would consult with RMG to confirm whether all responsive documents have been provided, and if not, that the responses be supplemented. In the interim, counsel for RMG has learned that all documents responsive to this request have been provided, with the exception of a jsp file and a type server file. RMG agrees to provide a supplemental response to this request, and agrees to produce said documents.

4. Document Request Nos. 50 and 54.

REQUEST FOR PRODUCTION OF DOCUMENTS NO.: 50

1 All Documents relating to all web pages viewable on
 2 <http://tbat.ticketbrokertools.com>.

3 RESPONSE TO REQUEST FOR PRODUCTION OF
 4 DOCUMENTS NO.: 50

5 Responding Party does not have any documents in its
 6 possession, custody or control responsive to this request because
 7 <http://tbat.ticketbrokertools.com> is not viewable; it is a software
 8 program. However, the source code to this software has already
 9 been provided in this litigation.

10 REQUEST FOR PRODUCTION OF DOCUMENTS NO.: 54

11 All Documents relating to every visitor to
 12 [www.tbat.ticketbrokertools.com](http://tbat.ticketbrokertools.com) from January 1, 2001 to present.

13 RESPONSE TO REQUEST FOR PRODUCTION OF
 14 DOCUMENTS NO.: 54

15 Responding Party does not have any documents responsive to
 16 this request in its possession, custody or control because
 17 [www.tbat.ticketbrokertools.com](http://tbat.ticketbrokertools.com) does not exist.

18 a. Ticketmaster's Contentions and Points and Authorities.

19 In response to Request Nos. 50 and 54, which seek all documents relating to
 20 web pages viewable on <http://tbat.ticketbrokertools.com> and visitors to
 21 [www.tbat.ticketbrokertools.com](http://tbat.ticketbrokertools.com), RMG responded that it does not possess any
 22 documents responsive to this request because "<http://tbat.ticketbrokertools.com> is
 23 not viewable; it is a software program," and "[www.tbat.ticketbrokertools.com](http://tbat.ticketbrokertools.com) does
 24 not exist." However, assuming, *arguendo*, this statement is correct as of today, it
 25 would not be correct for the entire time period at issue. There was a page of
 26 information publicly viewable at <http://tbat.ticketbrokertools.com> at some point,
 27 regardless of whether this is a software program or some other document.
 28 (Declaration of Kevin McLain filed in support of Ex Parte Application For
 Expedited Discovery Order To Determine Compliance With Preliminary Injunction
 ("McLain I Decl.") ¶ 11.) Thus, at a minimum, documents relating to the changes
 made to the pages formerly located at these addresses (i.e., the date and reason for
 the changes) would be responsive to this request and should be produced.

Furthermore, parties may seek to recover existing as well as deleted files

1 from an opposing party's computers. *See Simon Property Group L.P. v. mySimon,*
 2 *Inc.* (S.D.Ind. 2000) 194 FRD 639, 641 (plaintiff in trademark case sought files
 3 deleted from defendant's computer to prove contention that defendant was acting in
 4 bad faith in selecting a trade name).⁵

5 Ticketmaster's prosecution of its claims against RMG would suffer actual
 6 and substantial prejudice from the denial of the documents sought by this request –
 7 documents relating to <http://tbat.ticketbrokertools.com> and visitors to
 8 www.tbat.ticketbrokertools.com – as the requested documents likely contain
 9 information that is highly relevant to Ticketmaster's claims. For these reasons, the
 10 Court should compel production of all documents responsive to Request Nos. 50
 11 and 54.

12 b. RMG's Contentions and Points and Authorities.

13 In Request No. 50, Ticketmaster seeks all Web pages viewable on
 14 <http://tbat.ticketbrokertools.com>. However, as RMG responded,
 15 <http://tbat.ticketbrokertools.com> is not a Web page. It is a software application.
 16 Thus, it contains no Web pages. Anyone going onto that site will see that a box
 17 appears in the middle of the screen that allows a user to download an application.
 18 No Web pages appear thereon. Thus, it is impossible for RMG to provide a further
 19 response to this request.

20 In Request No. 54, RMG maintains that it does not have any documents
 21 which relate to every visitor to www.tbat.ticketbrokertools.com from January 1,
 22 2001 to present because www.tbat.ticketbrokertools.com does not exist.
 23 Ticketmaster has not produced any evidence to the contrary. Thus, it is impossible
 24 for RMG to provide a further response to this request.

27 ⁵ At the outset of this matter, the Court issued an injunction requiring RMG to
 28 preserve all documents.

c. Proposed Resolutions During the Conference of Counsel.

(1) Ticketmaster's Proposed Resolution.

At the mandatory meeting of counsel, counsel for RMG indicated that he was informed that these websites were not viewable and did not otherwise exist. (Knight Decl. ¶ 16.) Counsel for Ticketmaster responded that he possessed information to the contrary. (*Id.*) Counsel for RMG stated that he would double-check with his client and if the website did at one time exist, RMG would produce an activity log or other responsive documents. (*Id.*) Given the approaching discovery cut-off in this matter, counsel for Ticketmaster could only grant RMG until March 7, 2008, to provide a supplemental response. (*Id.*) To date, RMG still has not provided a supplemental response. (*Id.*)

(2) RMG's Proposed Resolution.

At the mandatory meeting of counsel, RMG's counsel agreed to go back to his client and confirm that the responses to Nos. 50 and 54 were accurate. Ticketmaster served this Stipulation before RMG's counsel had the opportunity to advise Ticketmaster's counsel that he had confirmed that the responses thereto were accurate.

C. RMG's Incomplete and Evasive Responses (Document Request Nos. 9, 26, 29, 37, 38, 41, 48, and 56).

1. Document Request Nos. 29 and 37.

REQUEST FOR PRODUCTION OF DOCUMENTS NO.: 29

All Communications relating to the efforts You made to conceal from Ticketmaster the fact that Tickets were being purchased from Ticketmaster for Your benefit, on Your behalf, or by using Your technology.

RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS NO.: 29

Responding Party objects to this request as it is vague, ambiguous and unintelligible as to the meaning of the word "efforts" and "technology." Notwithstanding the foregoing objection, after a diligent search and reasonable inquiry, Responding Party is unable to comply with this request, as Responding Party never took any actions to conceal that Tickets

1 were being purchased from Ticketmaster for Responding Parties
 2 benefit, on Responding Parties behalf or by using Responding
 3 Party's technology. However, all IP addresses which have been
 produced.

4 REQUEST FOR PRODUCTION OF DOCUMENTS NO.: 37

5 All Documents relating to all methods of avoiding detection of
 6 Your activities or Your clients' activities by Ticketmaster.

7 RESPONSE TO REQUEST FOR PRODUCTION OF
DOCUMENTS NO.: 37

8 Responding Party objects to this request as it is vague,
 9 ambiguous and unintelligible as to the term "activities" and
 "methods." Notwithstanding the foregoing objection,
 10 Responding Party is unable to comply with this request as no
 such documents exist, as Responding Party did not employ
 11 methods of detection. Notwithstanding the foregoing
 objections, and without waiving said objections, all IP addresses
 12 utilized by Responding Party will be produced.

13 a. Ticketmaster's Contentions and Points and Authorities.

14 In response to Request Nos. 29 and 37, which seek documents and
 15 communications relating to the efforts RMG made to conceal from Ticketmaster the
 16 fact that Tickets were being purchased from Ticketmaster for RMG's benefit or by
 17 using RMG's technology, RMG stated that it cannot comply with the request
 18 because it "never took any actions to conceal that Tickets were being purchased
 19 from Ticketmaster" for RMG's benefit or using its technology. RMG adds,
 20 however, that it has already produced all IP addresses which have been used by
 RMG and its clients.

21 This response is unacceptable for several reasons. First, it is demonstrably
 22 false. Ticketmaster is already in possession of an email RMG sent to one of its
 23 customers, Chris Kovach, that mentions nondisclosure agreements it requires its
 24 clients to sign, and describes the importance of not disclosing RMG's services to
 25 other brokers because such disclosures pose too much of a risk for RMG.
 26 (Declaration of Chris Kovach, filed in support of Ticketmaster's Motion for
 27 Preliminary Injunction ("Kovach Decl.") ¶ 12.) The nondisclosure agreements and
 28

1 emails obviously are intended to help conceal RMG and its services from
 2 Ticketmaster, and RMG should have produced all nondisclosure agreements and all
 3 emails similar to Mr. Kovach's sent to all other RMG clients. *See Rowe*
 4 *Entertainment*, 205 F.R.D. at 428.

5 Second, Ticketmaster is in possession of an RMG price list which touts the
 6 features of RMG's Super Proxy Service by stating "Never got locked out or slowed
 7 down by Ticketmaster," and that the Super Proxy "Intelligently manages, switches
 8 your IP's to prevent lockouts." (*See* Declaration of Mark Lee, filed in support of
 9 Ticketmaster's Motion for Preliminary Injunction ("Lee Decl.")) There can be but
 10 one purpose for switching customers' IP's to prevent lockouts by Ticketmaster – to
 11 conceal from Ticketmaster the purchase of tickets. It is obvious that the purpose of
 12 RMG's Super Proxy is to conceal the purchase of tickets.

13 Finally, RMG's reference to the production of IP addresses is unresponsive
 14 to this request unless the produced IP addresses reflect communications relating to
 15 efforts made to conceal from Ticketmaster the fact that tickets were being
 16 purchased.

17 Ticketmaster's prosecution of its claims against RMG would suffer actual
 18 and substantial prejudice from RMG's withholding of the documents sought by this
 19 request – communications and documents relating to RMG's efforts to avoid
 20 detection and to conceal from Ticketmaster the fact that Tickets were being
 21 purchased – as the requested documents undoubtedly contain admissions and other
 22 information that are highly relevant to Ticketmaster's claims. The Court should not
 23 permit RMG's wordplay to relieve it from its discovery obligations and instead
 24 should compel production of all documents responsive to Request Nos. 29 and 37.

25 b. RMG's Contentions and Points and Authorities.

26 On November 14, 2007, RMG provided a response to Request Nos. 29
 27 whereby it stated that "Responding Party objects to this request as it is vague,
 28 ambiguous and unintelligible as to the meaning of the word Ae efforts.@

1 Notwithstanding the foregoing objection, after a diligent search and reasonable
 2 inquiry, Responding Party is unable to comply with this request as no such
 3 documents exist.” It also provided a response to Request No. 37 whereby it stated
 4 “Responding Party objects to this request as it is vague, ambiguous and
 5 unintelligible as to the term Aactivities.@ Notwithstanding the foregoing objection,
 6 Responding Party is unable to comply with this request as no such documents
 7 exist.” In a meet and confer between counsel on December 7, 2007, Ticketmaster’s
 8 counsel requested that RMG supplement this response and set forth “why” no
 9 documents exist. On January 29, 2008, RMG supplemented the responses stating
 10 that the reason no such documents exist is that no efforts were made to conceal the
 11 fact that Tickets were being purchased from Ticketmaster for RMG’s benefit, on
 12 RMG’s behalf or using RMG’s technology. RMG also set forth that it provided all
 13 of its IP addresses to Ticketmaster in discovery, so that Ticketmaster can see that
 14 the IP addresses provided were not concealed, but were used to log onto the
 15 website.

16 Pointedly, RMG is not a ticket broker; its a software developer. Over the last
 17 several years, it has engaged in the purchase of tickets on only 128 occasions.
 18 Those records have been provided to Ticketmaster. On no occasion did RMG
 19 conceal the fact that Tickets were being purchased for it, on its behalf of by using
 20 its Technology. Moreover, it is RMG’s position that it is impossible to conceal
 21 when someone is purchasing tickets on www.ticketmaster.com’s Web site, because
 22 the Web site requires the user to log onto the Web site to buy tickets, and to provide
 23 information to the Web site. Moreover, all IP addresses which enter
 24 www.ticketmaster.com are recorded in Ticketmaster’s activity logs. There simply
 25 is no way to conceal the purchase of tickets.

26 c. Proposed Resolutions During the Conference of Counsel.

27 (1) Ticketmaster’s Proposed Resolution.

28 At the mandatory conference of counsel, counsel for RMG indicated that

1 producing documents in response to these requests would amount to an admission
 2 of wrongdoing by RMG, and, thus, no responsive documents would be produced.
 3 (Knight Decl. ¶ 17.) Counsel for RMG indicated that RMG maintains that they
 4 never took efforts to conceal the purchase of tickets, that this request is
 5 encompassed by others, and that Ticketmaster can get the information it seeks from
 6 RMG's ISPs. (*Id.*) Counsel for Ticketmaster proposed to replace the term
 7 "conceal" with a term that RMG would not view as constituting an admission of
 8 wrongdoing. (*Id.*) Counsel for RMG rejected that proposal, however, and stated
 9 his view that the request could not be cured. (*Id.*)

10 (2) RMG's Proposed Resolution.

11 At the mandatory conference of counsel, counsel from RMG stated that it
 12 was RMG's position that it had not engaged in the act of concealment or avoiding
 13 detection. RMG stands by its response.

14 **2. Document Request No. 26.**

15 REQUEST FOR PRODUCTION OF DOCUMENTS NO.: 26

16 All Documents relating to and sufficient to identify all Internet
 17 Service Provider ("ISP") services provided or used by You, on
 Your behalf, or by Your clients to purchase Tickets.

18 RESPONSE TO REQUEST FOR PRODUCTION OF
 19 DOCUMENTS NO.: 26

20 After a diligent search for documents, no such documents were
 21 in Responding Party's possession, custody or control, as no such
 IP addresses were used. However, Responding Party has
 provided all IP addresses registered and used by it.

22 a. Ticketmaster's Contentions and Points and Authorities.

23 In response to Request No. 26, which seeks all documents relating to all
 24 Internet Service Provider ("ISP") services provided or used by RMG, RMG stated
 25 that it possesses no such document "as no such IP addresses were used," and that it
 26 has already provided all IP addresses registered and used by it. This is
 27 unresponsive as the request seeks documents sufficient to identify ISP's not IP
 28 addresses.

Moreover, although knowledge of an IP address might reveal the accompanying ISP, this is not always the case. (Supplemental Reply Declaration of Kevin McLain, filed in support of Ticketmaster's Motion for Preliminary Injunction, ("Suppl. McLain Decl.").)

It is inconceivable that RMG does not utilize the services of any ISP, and such a claim is contradicted by documents that RMG has produced. In fact, RMG has produced documents indicating that it has at least used the services of ISP's SoftLayer, ThePlanet/EV1 Servers, C I Host, Intelenet, Rackspace, ServePass, and XO Communications. (Lieb Decl. ¶ 9.) Accordingly, invoices and receipts relating to the ISPs RMG used should have been produced, for example.

Ticketmaster's prosecution of its claims against RMG would suffer actual and substantial prejudice from the production of only IP addresses without documents sufficient to identify all ISP services provided or used by RMG, as the identity of the ISP's RMG used is highly relevant and likely to lead to the discovery of admissible evidence (including potential witnesses) supporting Ticketmaster's claims. For these reasons, the Court should compel production of all documents responsive to Request No. 26.

b. RMG's Contentions and Points and Authorities.

First, RMG does not provide or use ISP services for the purchase of Tickets by it or on its behalf. RMG is a software developer, not a ticket broker; thus, it does not generally purchase tickets. Notwithstanding this fact, RMG provided all of the IP addresses which it has utilized to Ticketmaster. Further, RMG has performed a further search for records sufficient to identify all ISP services provided to it subsequent to the meet and confer of counsel dated March 5, 2008, and has located more records which will be produced.

c. Proposed Resolutions During the Conference of Counsel

(1) Ticketmaster's Proposed Resolution.

At the mandatory conference of counsel, counsel for RMG stated that

1 RMG's production of IP addresses discharged its obligation to respond to this
 2 request. (Knight Decl. ¶ 18.) He elaborated that a review of the IP addresses used
 3 by RMG would reveal the ISP's used by RMG. (*Id.*) Counsel for Ticketmaster
 4 responded that RMG should produce additional documents (other than IP
 5 addresses) that specifically identify ISP's used by RMG. (*Id.*) Counsel for RMG
 6 indicated that he would confer with his client regarding whether any such
 7 documents exist. (*Id.*) Given the approaching discovery cut-off in this matter,
 8 counsel for Ticketmaster could only grant RMG until March 7, 2008, to provide a
 9 supplemental response. (*Id.*) To date, RMG still has not provided a supplemental
 10 response. (*Id.*)

11 (2) RMG's Proposed Resolution.

12 RMG's counsel stated he would confer with RMG to determine if more
 13 documents existed. RMG's counsel has done so, and RMG has located documents
 14 responsive to this request which will be produced.

15 **3. Document Request No. 9.**

16 REQUEST FOR PRODUCTION OF DOCUMENTS NO.: 9

17 All Documents relating to any web-based applications used to
 18 purchase Tickets.

19 RESPONSE TO REQUEST FOR PRODUCTION OF
DOCUMENTS NO.: 9

20 Responding Party objects to this request as it is vague,
 21 ambiguous and unintelligible as to the term "web-based
 22 applications used to purchase Tickets." Responding party
 23 objects to this request as it is overbroad. Notwithstanding the
 24 foregoing objections, after a diligent search and reasonable
 25 inquiry, Responding Party is unable to comply with this request
 26 as it does not have any records in its possession, custody or
 27 control with respect to its purchase of Tickets, or the purchase of
 28 tickets on its behalf. However, without waiving the aforesaid
 objections, Responding Party has already produced documents
 concerning its TBAT, which is the only software program that
 Responding Party has developed and marketed which can be
 used on the ticketmaster.com website, and Ticketmaster already
 has the technical documents concerning same in its possession,
 custody and control.

a. Ticketmaster's Contentions and Points and Authorities.

In response to Request No. 9, which seeks all documents relating to any web-based applications used to purchase tickets, RMG indicated that it "does not have any records in its possession ... with respect to its purchase of Tickets," and that it has already produced documents concerning TBAT and the technical documents concerning the same. However, records concerning RMG's purchase of tickets are not the only documents covered by this request and a review of the documents produced by RMG to date reveals that not all documents responsive to this request have been produced.

For example, one version of RMG's typing server was a web-based application and, thus, all documents relating to that version of RMG's typing server would be responsive and should be produced. (Lieb Decl. ¶ 12.) RMG has only produced source code relating thereto. (*Id.*) Again, RMG has produced documents reflecting multiple versions of its typing server, but has not produced any documents relating to the various differences and availability dates of these versions. (*Id.*) At a minimum, RMG must possess internal communications regarding these various versions of its typing server, and such should be produced. *Rowe Entertainment*, 205 F.R.D. at 428 (a party's e-mail communications relating to claims or defenses are a proper subject for a Rule 34 request).

In addition, documents produced by RMG reveal that RMG has failed to produce thirty-two (32) "open-source libraries" that are used in connection with TBAT. (Lieb Decl. ¶ 10.) These open-source libraries are required to run RMG's software, yet RMG did not provide them. (*Id.*) The documents also reveal that there are HTML/jsp files that allow a user to monitor the status of RMG's Super Proxy product when it is in use. (*Id.*) Documents relating to these files would also be responsive and should be produced. *See* Fed.R.Civ.P. 34(b), Adv. Comm. Note to 2006 Amendment (If necessary to enable the requesting party to use the information provided, "the responding party may need to provide some reasonable

1 amount of technical support, information on application software, or other
2 reasonable assistance....”).

3 Ticketmaster’s prosecution of its claims against RMG would suffer actual
4 and substantial prejudice from RMG’s withholding of the documents sought by this
5 request – documents relating to RMG’s web-based applications used to purchase
6 tickets – as the requested documents are highly relevant to Ticketmaster’s claims.
7 For these reasons, the Court should compel production of all documents responsive
8 to Request No. 9.

9 b. RMG’s Contentions and Points and Authorities.

10 Ticketmaster provided its own definition for the term “Tickets,”
11 limiting same to tickets purchased by or on behalf of RMG. It made the decision to
12 make a such a limited definition. Ticketmaster is the plaintiff in this action; it knew
13 the facts in its complaint. Based upon Ticketmaster’s definition of Tickets, no
14 such documents exist which are responsive to this request. However, in the spirit
15 of cooperation in the discovery process, RMG did indicate that TBAT is the only
16 product that it has developed or marketed which can be used on the
17 www.ticketmaster.com Web site, and it indicated that the records concerning same
18 have been provided to Ticketmaster.

19 Ticketmaster complains that from the documents provided by RMG, it
20 appears as though RMG failed to produce 32 open source libraries that TBAT
21 utilizes. However, these open source libraries are freely accessible on the internet
22 and are part of the public domain. RMG is not in possession, custody, or control of
23 same.

24 As stated earlier above, upon further search, RMG did acknowledge that it
25 did not produce its jsp files and type server files, and it will produce same.

26 c. Proposed Resolutions During the Conference of Counsel

27 (1) Ticketmaster’s Proposed Resolution.

28 At the mandatory conference of counsel, counsel for RMG stated that he is

1 informed that the typing server, source libraries, and 32 source codes referenced
 2 above are not “web based applications.” (Knight Decl. ¶ 21.) He stated that he
 3 would double-check with RMG, but that if his understanding is confirmed, RMG’s
 4 existing response would stand. (*Id.*) Given the approaching discovery cut-off in
 5 this matter, counsel for Ticketmaster could only grant RMG until March 7, 2008, to
 6 provide a supplemental response. (*Id.*) To date, RMG still has not provided a
 7 supplemental response. (*Id.*)

8 (2) RMG’s Proposed Resolution.

9 At the mandatory conference of counsel, RMG’s counsel stated that it was
 10 his understanding that the type server, source libraries and 32 source codes were not
 11 “web based applications,” but that he would confirm this with his client, and if such
 12 documents exist, same would be produced. Ticketmaster rushed to serve the instant
 13 stipulation before RMG’s counsel had the opportunity to confirm same.

14 4. Document Request No. 38.

15 REQUEST FOR PRODUCTION OF DOCUMENTS NO.: 38

16 All Documents relating to all Persons who created or helped
 17 create any computer programs identified in MPI Exh. 1.

18 RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS NO.: 38

19 Responding Party objects to producing any records regarding
 20 Triple Play and Purchasemaster as said request exceeds the
 21 scope of permissible discovery as triple play is unrelated to
 22 Ticketmaster.com. Subject to said objection, Plaintiff has
 already provided the employee list of RMG, and all Persons
 whose identity are responsive to this request are located thereon.

23 a. Ticketmaster’s Contentions and Points and Authorities.

24 In response to Request No. 38, which seeks all documents relating to all
 25 persons who created or helped create any of the computer programs identified in
 26 MPI Exh. 1, RMG responded that it has “already provided the employee list of
 27 RMG, and all persons whose identity are responsive to this request are located
 28 thereon.” This is another unresponsive response. This request seeks the production

1 of documents, not simply the identification of individuals. Thus, the fact that the
2 names of persons who helped create the computer programs appear somewhere on
3 RMG's employee list does not discharge RMG's obligation to fully respond to this
4 request. The employee list is merely one of the many documents that would be
5 responsive to this request. Any documents, including electronically stored
6 information, reflecting or discussing the fact that a particular employee created or
7 helped create any of the computer programs at issue would be responsive to this
8 request and should have been produced.

9 In addition, documents specifically referencing the employees at issue are
10 needed here because the Federal Rules limit the number of depositions that may be
11 taken in discovery. Accordingly, the production of documents identifying those
12 employees who actually created or helped create the programs at issue is necessary
13 to prevent Ticketmaster from wasting its limited number of depositions on persons
14 whose name appears on RMG's employee list, but who were not involved in the
15 creation of the subject programs.⁶

16 Ticketmaster's prosecution of its claims against RMG would suffer actual
17 and substantial prejudice from RMG's withholding of the documents sought by this
18 request – documents relating to all Persons who created or helped create any of
19 RMG's computer programs identified in MPI Exh. 1 – as the requested documents
20 are highly relevant to Ticketmaster's claims. For these reasons, the Court should
21 compel production of all documents responsive to Request No. 38.

22 b. RMG's Contentions and Points and Authorities.

23 During the mandatory meeting of counsel, counsel for RMG proposed to ask
24 RMG whether there were any other documents in its possession, custody, or control
25 responsive to this request. Subsequent to this meeting, RMG has informed its
26 counsel that the employee list is the only document it has responsive to this request.

27 ⁶ By making this argument Ticketmaster is not waiving any right to seek leave of
28 Court to exceed the limit on the number of depositions.

c. Proposed Resolutions During the Conference of Counsel

(1) Ticketmaster's Proposed Resolution.

At the mandatory conference of counsel, counsel for Ticketmaster suggested that RMG internally undertake efforts to identify which of its employees were involved in the development of the items listed on MPI Ex. 1, and then produce all communications to or from those employees relating to the development of the items listed on MPI Ex. 1. (Knight Decl. ¶ 22.) Counsel for RMG stated that RMG provided all software development documentation as indicated in a letter dated December 6, 2008. (*Id.*) Counsel for RMG stated that he does not believe any additional documents relating to the development of the software at issue exist, given ad hoc nature of software development and RMG's general operations. (*Id.*) However, he stated that he would confer with his client to ensure that it possess no additional responsive documents. (*Id.*) Given the approaching discovery cut-off in this matter, counsel for Ticketmaster could only grant RMG until March 7, 2008, to provide a supplemental response. (*Id.*) To date, RMG still has not provided a supplemental response. (*Id.*)

(2) RMG's Proposed Resolution.

RMG will provide a supplemental response setting forth that it has no further documents responsive to this request.

5. Document Request No. 41.

REQUEST FOR PRODUCTION OF DOCUMENTS NO.: 41

All Documents relating to all visits You made to Ticketmaster's website (www.ticketmaster.com) from January 1, 2001 to present.

RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS NO.: 41

Responding Party objects to this request as it is beyond the scope of permissible discovery. Responding Party objects to this request as being burdensome and oppressive. Responding Party objects to this request as it seeks information which is already in the possession, custody or control of Asking Party. Notwithstanding said objections, and without waiving same,

Responding Party will produce all records which reflect purchases it made on the ticketmaster.com website, which are in its possession, custody and control, with the exception of backup documentation which was provided to ticketmaster during said purchases, including, but not limited to credit card statements, invoices and receipts.

a. Ticketmaster's Contentions and Points and Authorities.

Request No. 41 seeks all documents relating to all visits RMG made to Ticketmaster's website from January 1, 2001 to present. In its supplemental response, RMG objects and states that it will produce all records which reflect purchases it made on the ticketmaster.com website. However, the request is not limited to visits to Ticketmaster's website during which RMG made a purchase. If RMG visited Ticketmaster's website on other occasions and did not make a purchase (to investigate the operation of ticketmaster.com for development of effective software, for example), yet possesses a document memorializing, referring to, or reflecting that visit, such a document would be responsive to Request No. 41 and should be produced.

A request for "documents" should be understood to include a request for electronically-stored information, unless discovery in the action has clearly distinguished between the two. Fed.R.Civ.P. 34(a), Adv. Comm. Note to 2006 Amendment. Moreover, data collected and stored through use of the Internet, including "bookmarks" and browser history identifying Web sites visited falls within the definition of discoverable "electronically-stored information" and should have been produced by RMG. Schwarzer, Tashima & Wagstaffe, ch. 11(IV)-C, ¶ 11:1850.5, at 11-222.

Ticketmaster's prosecution of its claims against RMG would suffer actual and substantial prejudice from RMG's withholding of the documents sought by this request – documents relating to all visits RMG made to Ticketmaster's website (www.ticketmaster.com) from January 1, 2001 to present – as the requested documents are highly relevant to Ticketmaster's claims – in particular, its copyright

1 and Digital Millennium Copyright Act claims. For these reasons, the Court should
2 compel production of all documents responsive to Request No. 41.

3 b. RMG's Contentions and Points and Authorities.

4 During the mandatory conference of counsel, in response to this request,
5 counsel for Ticketmaster represented that he would inquire into whether
6 Ticketmaster has documents in its possession, custody, or control that are
7 responsive to this request. It is RMG's position that the documents Ticketmaster
8 seeks are equally available—if not more likely available to Ticketmaster.
9 Specifically, all IP addresses that enter the www.ticketmaster.com Web site are
10 recorded in Ticketmaster's activity logs. Moreover, RMG does not generate
11 records which show any visits to Ticketmaster's Web site. Accordingly, RMG
12 stands by its objection that the documents Ticketmaster seeks is equally in the
13 possession, custody, or control of Ticketmaster. Furthermore, Ticketmaster is
14 seeking documents that are well beyond any time period in which it alleges RMG
15 has done any of the acts complained of. Accordingly, RMG finds this request to be
16 burdensome and oppressive.

17 c. Proposed Resolutions During the Conference of Counsel.

18 (1) Ticketmaster's Proposed Resolution.

19 At the mandatory conference of counsel, in response to RMG's claim that the
20 request was overbroad and that RMG had already produced documents relating to
21 visits to www.ticketmaster.com during which a purchase had been made, counsel
22 for Ticketmaster offered to limit the request to documents relating to visits to site
23 relating to RMG's development of its ticket-purchasing software. (Knight Decl. ¶
24 23.) Counsel for RMG stated that he would confer with his client to ascertain
25 whether it possesses additional responsive documents, but that the requested
26 information is equally available to Ticketmaster by way of the IP addresses that
27 RMG has produced. (*Id.*) He also requested that Ticketmaster undertake to
28 determine whether or not it already possesses the requested information, which, in

1 his view, would alleviate RMG's need to search for the responsive documents.
 2 (*Id.*) Given the approaching discovery cut-off in this matter, counsel for
 3 Ticketmaster could only grant RMG until March 7, 2008, to provide a supplemental
 4 response. (*Id.*) To date, RMG still has not provided a supplemental response. (*Id.*)

5 (2) RMG's Proposed Resolution.

6 During the mandatory conference of counsel, Ticketmaster's counsel
 7 represented that he would inquire as to whether his client already has the responsive
 8 information that it seeks from RMG. To date, Ticketmaster's counsel has not
 9 provided RMG with any response as to whether Ticketmaster has the information in
 10 its possession, custody, or control. Finally, counsel for RMG proposed to ask RMG
 11 if it had any further documents responsive to this request. RMG has represented
 12 that it has no other documents responsive to this request.

13 **6. Document Request No. 48.**

14 REQUEST FOR PRODUCTION OF DOCUMENTS NO.: 48

15 All Documents relating to all websites You have registered in
 16 the name of RMG, Ticket Broker Tools, Inc., or in any of Your
 17 prior business names, employees' names, or in the name of any
 other Person(s) acting for Your benefit or on Your behalf.

18 RESPONSE TO REQUEST FOR PRODUCTION OF
DOCUMENTS NO.: 48

19 Responding Party cannot comply with this request because
 20 websites cannot be registered.

21 a. Ticketmaster's Contentions and Points and Authorities.

22 In response to Request No. 48, which seeks documents relating to websites
 23 registered by RMG, RMG responded with the hyper-technical contention that it
 24 could not comply with the request because websites cannot be registered.
 25 However, from the context of this case, it is clear that Request No. 48 refers to
 26 websites owned and/or operated by RMG or, stated differently, websites for which
 27 a domain name was registered by or on behalf of RMG. Such, documents are
 28 relevant and should be produced.

1 In addition, before RMG supplemented its responses, Ticketmaster invited
 2 RMG to seek further clarification regarding any seemingly inapplicable definitions
 3 if necessary. (Knight Decl. ¶ 5.) However, RMG never sought any additional
 4 clarification for any of the terms used. (*Id.*) Ticketmaster was obviously not
 5 seeking documents that could not possibly exist. Thus, RMG's failure to seek
 6 clarification regarding the term "registered" belies a good faith belief that the
 7 phrase was either incomprehensible or subject to the hyper-technical interpretation
 8 argued by RMG.

9 b. RMG's Contentions and Points and Authorities.

10 First, RMG has provided an accurate, good faith response to this request.
 11 Second, RMG provided its supplemental response to this request on January 29,
 12 2008. Accordingly, Ticketmaster has been aware of the fact that a Web site cannot
 13 be registered for nearly two months. If Ticketmaster sought other documents, it
 14 should have propounded further discovery requests seeking this information;
 15 however, for nearly two months, it did absolutely nothing. Accordingly, its demand
 16 that RMG "fix" its failure to propound further discovery is baseless. There is
 17 simply no requirement under the Federal Rules to require RMG to do so. Moreover,
 18 there was no need for RMG to have sought any additional clarification of any
 19 terms. There was no confusion as to the meaning of the term "registered."

20 c. Proposed Resolutions During the Conference of Counsel.

21 (1) Ticketmaster's Proposed Resolution.

22 At the mandatory meeting of counsel, counsel for Ticketmaster proposed
 23 amending the request by replacing the term "registered" with the phrase "owned
 24 and/or operated." (Knight Decl. ¶ 24.) Counsel for RMG stated that he would
 25 confer with his client, but would likely not agree to the proposed amendment unless
 26 RMG is afforded a new 30-day deadline within which to comply, because, in his
 27 view, the proposed amendment would constitute an entirely new request. (*Id.*)
 28 Because very little time remains before the discovery cutoff, counsel for

1 Ticketmaster could not agree to provide an additional 30 days for RMG to respond.
2 (*Id.*)

3 (2) RMG's Proposed Resolution.

4 RMG proposed that Ticketmaster propound further discovery requests
5 reflecting an accurate description of the documents that it seeks. RMG's counsel
6 also represented that he would confer with RMG to see if it was amenable to the
7 proposed amendments to the request. RMG is not amenable to said amendment.

8 **7. Document Request No. 56.**

9 REQUEST FOR PRODUCTION OF DOCUMENTS NO.: 56

10 All Documents relating to all of Your revenues or profits from
11 the sale or lease of Automated Devices and software used to
access Ticketmaster's website and buy Tickets.

12 RESPONSE TO REQUEST FOR PRODUCTION OF
13 DOCUMENTS NO.: 56

14 Responding Party cannot comply with this request as it did not
15 receive any revenues or profits from the sale or lease of
Automated Devices and software used to access Ticketmaster's
website and buy Tickets.

16 a. Ticketmaster's Contentions and Points and Authorities.

17 RMG's supplemental response to Request No. 56 states that it cannot
18 produce responsive documents because "it did not receive any revenues or profits
19 from the sale or lease of Automated Devices and software used to access
20 Ticketmaster's website and buy Tickets." This response is obviously not true and
21 suggests that RMG is again employing an overly narrow interpretation of this
22 request, rather than a good faith response.

23 In its supplemental response to Request No. 5, RMG stated that it "has
24 developed software for the purchase of tickets." (Knight Decl., ¶ 7.) In its
25 supplemental response to Request No. 8, which seeks documents relating to
26 "Automated Devices" used to access Ticketmaster's website, RMG identified its
27 "Ticket Broker Acquisition Tool" ("TBAT"). (*Id.*) In addition, in response to
28 Request No. 11, which seeks documents relating to how RMG obtained or

1 developed Automated Devices, RMG did not deny possessing responsive
 2 documents, but merely objected that they contain “trade secrets.” (*Id.*) These
 3 responses clearly demonstrate that RMG is in the business of developing automated
 4 devices for profit, and it defies all reason for RMG to claim that it has not received
 5 any revenue from those devices.

6 Ticketmaster anticipates that RMG will contend that (a) the definition of the
 7 term “Tickets” limits the scope of this request to tickets purchased by RMG or on
 8 RMG’s behalf, (b) it did not receive any revenue or profit for tickets it purchased or
 9 tickets purchased on its behalf, and (c) therefore, it possesses no responsive
 10 documents. However, the context of the parties’ dispute makes it obvious that the
 11 term “Tickets” was not intended to be so limited. Indeed, RMG raised this issue in
 12 November 2007 and Ticketmaster explained that the term “Tickets” as used in this
 13 request was not so limited. (Knight Decl. ¶ 5.) Ticketmaster also invited RMG to
 14 seek further clarification regarding any seemingly inapplicable definitions if
 15 necessary. (*Id.*) However, RMG never sought any additional clarification. (*Id.*) It
 16 is disingenuous for RMG to now claim that when it provided its supplemental
 17 responses, over two months later, it interpreted “Tickets” in a manner that excluded
 18 tickets purchased by or on behalf of persons other than RMG.

19 Ticketmaster’s prosecution of its claims against RMG would suffer actual
 20 and substantial prejudice from RMG’s withholding of the documents sought by this
 21 request – documents relating to RMG’s revenues and profits from the sale or lease
 22 of Automated Devices and software used to access Ticketmaster’s website – as the
 23 requested documents are highly relevant to Ticketmaster’s claims, including its
 24 claimed damages and its efforts to impose a constructive trust over RMG’s ill-
 25 gotten gains. For these reasons, the Court should compel production of all
 26 documents responsive to Request No. 56.

27 **b. RMG’s Contentions and Points and Authorities.**

28 First, RMG has provided an accurate, good faith response to this request.

Second, Ticketmaster provided its own definition for the term “Tickets.” It made the decision to make a such a limited definition. Pointedly, it is the plaintiff in this action; it knew the facts in its complaint. Accordingly, any argument by Ticketmaster that the term “Tickets” was not intended to be so limited is simply absurd. If it desired a broader definition it should have either: (1) drafted such a definition in its original request for documents; or (2) propounded a further request for documents setting forth its broader definition. Moreover, Ticketmaster is again demanding that RMG “fix” its errors; however, there is no requirement under the Federal Rules, nor has Ticketmaster provided any such authority requiring RMG to do so. Furthermore, this demand by Ticketmaster is even more egregious as it has known of this limited definition of the term “Tickets” since November, 2007, but never propounded further requests. Furthermore, RMG denies that it has ever produced “Automated Devices” as set forth in the definition provided by Ticketmaster. Finally, Ticketmaster’s bad faith demand that RMG not only accept its changed definition—without propounding further discovery—but also provide responses within 2 days of the mandatory meeting of counsel, was deemed by RMG to be wholly inappropriate, unsupported by the Federal Rules of Civil Procedure, and clearly an attempt at harassing and annoying RMG.

c. Proposed Resolutions During the Conference of Counsel.

(1) Ticketmaster’s Proposed Resolution.

At the mandatory conference of counsel, counsel for RMG reiterated RMG’s position that according to the definition of the term “Tickets,” no responsive documents exist. (Knight Decl. ¶ 19.) Ticketmaster’s counsel offered to amend the request by dropping the phrase “and buy Tickets.” (*Id.*) Counsel for RMG stated that he would ask RMG if it possesses documents responsive to the modified request. (*Id.*) Given the approaching discovery cut-off in this matter, counsel for Ticketmaster could only grant RMG until March 7, 2008, to provide a supplemental response. (*Id.*) To date, RMG still has not provided a supplemental response. (*Id.*)

(2) RMG's Proposed Resolution.

RMG proposed that Ticketmaster propound further request for documents reflecting any changed definitions for its specially defined term "Tickets."

D. RMG's Unfounded Relevance Objections (Document Request Nos. 3, 13, 27, 34, 39, 57, and 58).

1. Document Request No. 39.

REQUEST FOR PRODUCTION OF DOCUMENTS NO.: 39

All Communications You have had with any Person to whom You sold, leased, rented, or licensed or otherwise made available any products or services mentioned in MPI Exh. 1.

RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS NO.: 39

Responding Party objects to this request as exceeding permissible discovery, as it is irrelevant to the issues in the instant matter. Responding Party objects to this request as it seeks information which constitutes "trade secrets" or other "confidential research, development or commercial information" pursuant to Rule 26(c)(7). Responding party objects to this request as it seeks confidential financial information of third parties. Responding Party objects to this request as it seeks information regarding Triple Play and Purchasemaster, which are unrelated to this lawsuit.

a. Ticketmaster's Contentions and Points and Authorities.

The Federal Rules permit Ticketmaster to propound discovery that relates to "any matter, not privileged, that is relevant to the claim or defense of that party." Fed.R.Civ.P. 26(b)(1). "It is a common principle that the rules of discovery are to be broadly and liberally construed so as to permit the discovery of any information which is relevant and is reasonably calculated to lead to the discovery of admissible evidence." *Willis*, 2007 WL 2455873, *2. This request is relevant to the claims and defenses at issue in this matter.

Ticketmaster alleges that RMG develops, markets and sells, computer programs that enable its ticket broker customers to access Ticketmaster's website, block access to the best tickets, copy purchase pages, and quickly purchase large quantities of tickets faster than human customers can, in violation of the website's

1 terms of use. Accordingly, this request seeks the identity of RMG's customers and
2 communications with those customers regarding RMG's products.

3 RMG has objected that this request is irrelevant. But RMG's
4 communications with its customers will be an obvious source of witnesses,
5 information and admissions relating to RMG's products and their intended and
6 actual use by its customers. Such information is clearly relevant to Ticketmaster's
7 claims, and the deprivation of such information would result in actual and
8 substantial prejudice to Ticketmaster's ability to prosecute its claims. For these
9 reasons, the Court should compel production of all documents responsive to
10 Request No. 39.

11 b. RMG's Contentions and Points and Authorities.

12 First, this request seeks documents that are entirely irrelevant to the issues in
13 this case. Specifically, this request seeks any documents that reflect any
14 communications between RMG and any person who it allegedly sold, leased,
15 rented, licensed or otherwise made available any products or services mentioned in
16 MPI Exh. I. The request fails to qualify that the documents must relate to
17 communications regarding the products or services mentioned in MPI Exh I.
18 Rather, the plain language of this request seek documents that are not related to this
19 action whatsoever. By way of example, pursuant to this request, should RMG have
20 received a communication from someone who allegedly leased a product cited in
21 MPI Exh. I, regarding a matter wholly unrelated to the lease or sale of the product,
22 such as the alleged customer's birthday party or decision to purchase a new car, as
23 drafted, RMG would be required to produce said document. Clearly, such
24 documents are entirely irrelevant to the issues in this case. Accordingly, as drafted,
25 Ticketmaster has failed to narrowly tailor its request to seek only relevant
26 documents; accordingly, RMG stands by its objection that this request seeks
27 documents that are irrelevant to this action.

28 Second, RMG further objects to this request as Ticketmaster is seeking

documents that would violate third parties' constitutional right to privacy pursuant to California Constitution Article 1, § 1. Specifically, the documents Ticketmaster seeks could compel the disclosure of private and sensitive information regarding third parties' personal financial affairs; thus violating their constitutional right to privacy. Furthermore, this is an objection that Ticketmaster repeatedly made in its response to RMG's request for documents. Accordingly, RMG stands by its objection that this request seeks confidential financial information of third parties.

c. Proposed Resolutions During the Conference of Counsel

(1) Ticketmaster's Proposed Resolution.

At the mandatory conference of counsel, counsel for Ticketmaster suggested that RMG amend its response to remove the objection based on relevance and produce responsive documents in its possession. (Knight Decl. ¶ 20.) Counsel for RMG stated that he would confer with his client regarding supplementing the response and whether RMG possessed any responsive documents. (*Id.*) Given the approaching discovery cut-off in this matter, counsel for Ticketmaster could only grant RMG until March 7, 2008, to provide a supplemental response. (*Id.*) To date, RMG still has not provided a supplemental response. (*Id.*)

(2) RMG's Proposed Resolution.

RMG proposed that Ticketmaster propound further discovery requests that are narrowly tailored so as to only seek documents that are relevant to the instant action. However, counsel for RMG represented that RMG would not violate any third person's right to privacy.

2. Document Request No. 13.

REQUEST FOR PRODUCTION OF DOCUMENTS NO.: 13

All Documents relating to the purchase, use, distribution and resale of tickets that were initially purchased through Ticketmaster.

RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS NO.: 13

1 Responding Party objects to this request as it is beyond the
 2 scope of permissible discovery. Responding Party objects to
 3 this request as it is overbroad. Responding party objects to this
 4 request as it is irrelevant. Responding party objects to this
 5 request as it seeks information which is entirely unrelated to the
 6 allegations regarding use of computer programs set forth in the
 7 First Amended Complaint.

8 a. Ticketmaster's Contentions and Points and Authorities.

9 The Federal Rules permit Ticketmaster to propound discovery that relates to
 10 "any matter, not privileged, that is relevant to the claim or defense of that party."
 11 Fed.R.Civ.P. 26(b)(1). RMG contends that this request is irrelevant. However,
 12 documents relating to the purchase, use, distribution and resale of tickets that were
 13 initially purchased through Ticketmaster could not be more relevant. Ticketmaster
 14 alleges in its Complaint that RMG develops, markets and sells, computer programs
 15 that enable its ticket broker customers to access Ticketmaster's website, block
 16 access to the best tickets, copy purchase pages, and quickly purchase large
 17 quantities of tickets faster than human customers can, in violation of
 18 www.ticketmaster.com's terms of use. Communications between RMG and its
 19 customers and others regarding the use of those devices goes to the very heart of the
 20 case. Such documents are clearly relevant. To deprive Ticketmaster of any
 21 documents relating to the purchase, use, distribution and resale of tickets that were
 22 initially purchased through Ticketmaster would result in actual and substantial
 23 prejudice to Ticketmaster's ability to prosecute its claims. For these reasons, the
 24 Court should compel production of all documents responsive to Request No. 13.

25 b. RMG's Contentions and Points and Authorities.

26 This request is irrelevant. Ticketmaster seeks any and all documents relating
 27 to *any* purchase, use, distribution, and resale of tickets that were initially purchased
 28 through Ticketmaster—regardless of whether there is any connection to RMG, the
 claims asserted by Ticketmaster, or the defenses asserted by RMG. Accordingly,
 RMG stands by its objections.

c. Proposed Resolutions During the Conference of Counsel

(1) Ticketmaster's Proposed Resolution.

At the mandatory conference of counsel, in response to RMG's contention that the request is overly broad, counsel for Ticketmaster requested proposals from RMG for re-wording the request in a manner that would allay its overbreadth concerns. (Knight Decl. ¶ 14.) Counsel for RMG indicated that he would confer with his client regarding the provision of a re-worded request that would be acceptable in his view. (*Id.*) Given the approaching discovery cut-off in this matter, counsel for Ticketmaster could only grant RMG until March 7, 2008, to provide a supplemental response. (*Id.*) To date, RMG still has not provided a supplemental response. (*Id.*)

(2) RMG's Proposed Resolution.

RMG's counsel proposed that Ticketmaster propound further requests limiting the scope of documents that it sought. Specifically, propound requests that seek documents relating to RMG and its connection to Ticketmaster. However, Ticketmaster never made any suggestions to limit the scope of this request.

3. Document Request No. 58.

REQUEST FOR PRODUCTION OF DOCUMENTS NO.: 58

All Communications You had with any Person relating to the RMG products.

RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS NO.: 58

Responding Party objects to this request as it seeks information beyond the scope of permissible discovery that is not relevant to the issues in the instant lawsuit, as it specifically requests information Unrelated to Ticketmaster. Responding Party objects to this request as it is burdensome and oppressive. Responding Party objects to this request as it is propounded for no reason other than to harass and annoy. Responding Party objects to this request as it is overbroad.

a. Ticketmaster's Contentions and Points and Authorities.

The Federal Rules permit Ticketmaster to propound discovery that relates to

1 “any matter, not privileged, that is relevant to the claim or defense of that party.”
 2 *See* Fed.R.Civ.P. 26(b)(1). RMG contends that this request is irrelevant. However,
 3 communications RMG had with its customers and others about its products are
 4 highly relevant. Ticketmaster alleges that RMG develops, markets and sells,
 5 computer programs that enable its ticket broker customers to access Ticketmaster’s
 6 website, block access to the best tickets, copy purchase pages, and quickly purchase
 7 large quantities of tickets faster than human customers can, in violation of
 8 www.ticketmaster.com’s terms of use. Communications between RMG and its
 9 customers and others regarding its products will by definition contain admissions
 10 and information relevant to Ticketmaster’s claims in this case. Such documents are
 11 clearly relevant and any communications RMG possesses relating to its products
 12 should be produced.

13 To the extent that RMG is objecting that it possesses communications
 14 relating to certain products that have nothing to do with the issues in this case,
 15 RMG should have distinguished between relevant and irrelevant products and
 16 produced communications relating to those products it contends are relevant.
 17 Fed.R.Civ.P. 34(b). However, to withhold all documents responsive to this
 18 requests, which seeks highly relevant information, is grossly inappropriate.

19 Ticketmaster’s prosecution of its claims against RMG would suffer actual
 20 and substantial prejudice from RMG’s withholding of its communications
 21 regarding its products, as such documents are arguably the most relevant source of
 22 information available in this case. For these reasons, the Court should compel
 23 production of all documents responsive to Request No. 58.

24 b. RMG’s Contentions and Points and Authorities.

25 First, Ticketmaster’s claim that RMG should provide documents it deems
 26 relevant and withhold documents it deems irrelevant, would, by the very definition,
 27 violate RMG’s counsel’s attorney work product privilege. *See 2,022 Ranch, L.L.C.*
 28 *v. Superior Court* 113 Cal.App.4th 1377, 1389-1390 (Attorney work product

1 doctrine intended on protecting the mental processes and plan of strategy of the
 2 attorney in the preparation of client's case). Hence, said demand is simply
 3 frivolous. Second, RMG has other products, which Ticketmaster even concedes
 4 have nothing to do with this case. Accordingly, requiring RMG to produce
 5 documents regarding products that have nothing to do with this case will not likely
 6 lead to the discovery of admissible evidence, and therefore, does not need to be
 7 produced. Accordingly, RMG's objection on relevancy grounds is meritorious, and
 8 RMG stands by said objection.

9 c. Proposed Resolutions During the Conference of Counsel

10 (1) Ticketmaster's Proposed Resolution.

11 At the mandatory conference of counsel, counsel for RMG indicated that he
 12 would confer with his client regarding production of responsive documents.
 13 (Knight Decl. ¶ 25.) Counsel for Ticketmaster reiterated that the request
 14 encompasses all communications regarding RMG's products. (*Id.*) Given the
 15 approaching discovery cut-off in this matter, counsel for Ticketmaster could only
 16 grant RMG until March 7, 2008, to provide a supplemental response. (*Id.*) To date,
 17 RMG still has not provided a supplemental response. (*Id.*)

18 (2) RMG's Proposed Resolution.

19 RMG proposed that Ticketmaster propound further requests that limit the
 20 documents it seeks to documents that are relevant to the claims and defenses to this
 21 action. RMG's counsel explained that as drafted, this request was seeking
 22 documents unrelated to this action.

23 **4. Document Request Nos. 34 and 57.**

24 REQUEST FOR PRODUCTION OF DOCUMENTS NO.: 34

25 All Documents, including but not limited to financial records,
 26 relating to all revenue You have received relating to all products
 and services mentioned in MPI Exh. 1.

27 RESPONSE TO REQUEST FOR PRODUCTION OF
 28 DOCUMENTS NO.: 34

1 Responding Party objects to this request as exceeding
 2 permissible discovery, as it is irrelevant to the issues in the
 3 instant matter. Responding Party objects to this request as it
 4 seeks information which constitutes “trade secrets” or other
 5 “confidential research, development or commercial information”
 6 pursuant to Rule 26(c)(7). Responding Party objects to this
 7 request as it seeks confidential financial information of third
 8 parties.

9 REQUEST FOR PRODUCTION OF DOCUMENTS NO.: 57

10 All Documents relating to all of Your revenues or profits from
 11 the sale or lease of Automated Devices and software used to
 12 access any ticket selling website.

13 RESPONSE TO REQUEST FOR PRODUCTION OF
 14 DOCUMENTS NO.: 57

15 Responding Party objects to this request as it seeks information
 16 beyond the scope of permissible discovery that is not relevant to
 17 the issues in the instant lawsuit, as it specifically requests
 18 information unrelated to Ticketmaster. Responding Party
 19 objects to this request as it is burdensome and oppressive.
 20 Responding Party objects to this request as it is propounded for
 21 no reason other than to harass and annoy.

22 a. Ticketmaster’s Contentions and Points and Authorities.

23 The Federal Rules permit Ticketmaster to propound discovery that relates to
 24 “any matter, not privileged, that is relevant to the claim or defense of that party.”
 25 Fed.R.Civ.P. 26(b)(1). “It is a common principle that the rules of discovery are to
 26 be broadly and liberally construed so as to permit the discovery of any information
 27 which is relevant and is reasonably calculated to lead to the discovery of admissible
 28 evidence.” *Willis*, 2007 WL 2455873, *2. Both Document Request Nos. 34 and 57
 are narrowly tailored and call for documents that are directly relevant to
 Ticketmaster’s claims and necessary for Ticketmaster to conduct its investigation of
 RMG’s defenses and claims. In its Complaint, Ticketmaster has sought the
 imposition of a constructive trust. (Complaint p. 37:15-18.) These requests seek
 documents relating to the revenue obtained by RMG from its sale of devices and
 software used to access Ticketmaster’s website unlawfully. Such information is
 highly relevant to Ticketmaster’s efforts to trace RMG’s ill-gotten gains for the
 imposition of a constructive trust.

1 RMG contends that such discovery is improper because a constructive trust is
 2 merely a remedy and has not been pled by Ticketmaster as a cause of action.
 3 However, courts have held that discovery requests seeking to trace funds for the
 4 purpose of imposing a constructive are appropriate. *Stanton v. Couturier* (E.D.Cal.
 5 2007 WL 4570699, *3 (acknowledging that to impose a constructive a plaintiff,
 6 generally, must engage in investigation and obtain information as part of the
 7 discovery process in civil actions); *TMG II v. U.S.* (D.C. Cir. 1993) 1 F.3d 36, 44
 8 (remanding case to allow full discovery to determine whether plaintiff can trace
 9 proceeds necessary to impose constructive trust); *Carpenters Pension and Annuity*
 10 *Fund of Philadelphia and Vicinity v. Banks* (E.D.Pa. 2003) 271 F.Supp.2d 639, 642
 11 (recognizing need to conduct discovery to trace funds necessary to impose
 12 constructive trust).

13 Ticketmaster's prosecution of its claims against RMG would suffer actual
 14 and substantial prejudice from RMG's withholding of the documents sought by this
 15 request, as the requested documents are highly relevant to Ticketmaster's efforts to
 16 establish a constructive trust over RMG's ill-gotten gains. If Ticketmaster is unable
 17 to trace the funds originating from RMG's unlawful activity, RMG might assert
 18 that inability as a defense to the imposition of a constructive trust. For these
 19 reasons, the Court should compel production of all documents responsive to
 20 Request Nos. 34 and 57.

21 b. RMG's Contentions and Points and Authorities.

22 Ticketmaster misapprehends the purpose of a constructive trust.

23 A " 'Constructive trust' is involuntary equitable trust created by operation of
 24 law as remedy to compel transfer of property from person wrongfully holding it to
 25 its rightful owner." *Campbell v. Superior Court*, (2005) 132 Cal.App.4th 904, 920.
 26 "[A] constructive trust may only be imposed where the following three conditions
 27 are satisfied: (1) the existence of a *res* (property or some interest in property); (2)
 28 the *right* of a complaining party to that *res*; and (3) some *wrongful* acquisition or

1 detention of the res by another party who is not entitled to it.” *Communist Party v.*
 2 *522 Valencia, Inc.* (1995) 35 Cal.App.4th 980, 990.

3 Here, Ticketmaster has failed to set forth any basis that would entitle it to
 4 obtain a constructive trust. Specifically, Ticketmaster claims that it is not a
 5 competitor of RMG. *See* Footnote 2 Supra. Accordingly, Ticketmaster is not the
 6 rightful owner of any property currently in the possession of RMG. Thus,
 7 Ticketmaster has no right to “trace RMG’s ill-gotten gains for the imposition of a
 8 constructive trust.” Accordingly, this request is irrelevant, and is therefore unlikely
 9 to lead to the discovery of admissible evidence.

10 c. Proposed Resolutions During the Conference of Counsel.

11 (1) Ticketmaster’s Proposed Resolution.

12 At the mandatory conference of counsel, counsel for Ticketmaster suggested
 13 that RMG produce additional documents. (Knight Decl. ¶ 26.) Refusing to agree
 14 to produce responsive documents, counsel for RMG stated that all of RMG’s
 15 revenue and profits are irrelevant because Ticketmaster has not sought the equitable
 16 remedy of disgorgement, nor is it available in his view. (*Id.*) Counsel for
 17 Ticketmaster responded that the information may, however, be relevant to
 18 Ticketmaster’s efforts to impose a constructive trust and to prove damages. (*Id.*)

19 (2) RMG’s Proposed Resolution.

20 RMG’s counsel explained that a constructive trust is an improper remedy in
 21 this case. Therefore, counsel explained that RMG does not believe that these
 22 requests are relevant.

23 **5. Document Request No. 3.**

24 REQUEST FOR PRODUCTION OF DOCUMENTS NO.: 3

25 All Documents relating to all sources of funds You used to
 26 purchase Tickets.

27 RESPONSE TO REQUEST FOR PRODUCTION OF
 28 DOCUMENTS NO.: 3

1 Responding Party objects to this request as it seeks
2 information that is not relevant to the claims of Ticketmaster, or
defenses of Responding Party.

3 a. Ticketmaster's Contentions and Points and Authorities.

4 The Federal Rules permit Ticketmaster to propound discovery that relates to
5 "any matter, not privileged, that is relevant to the claim or defense of that party."
6 Fed.R.Civ.P. 26(b)(1). "It is a common principle that the rules of discovery are to
7 be broadly and liberally construed so as to permit the discovery of any information
8 which is relevant and is reasonably calculated to lead to the discovery of admissible
9 evidence." *Willis*, 2007 WL 2455873, *2. This request is narrowly tailored and
10 calls for documents that are directly relevant to Ticketmaster's claims and
11 necessary for Ticketmaster to conduct its investigation of RMG's defenses and
12 claims. The request seeks the sources of funds RMG used to purchase tickets.
13 RMG contends that this request is irrelevant because the time to add additional
14 defendants has passed in this matter. However, documents relating to the source of
15 funds used by RMG to fund its unlawful operation will likely be a source of
16 witnesses, information and admissions relating to RMG's products and business.
17 Such documents would, thus, be highly relevant and should be produced.

18 b. RMG's Contentions and Points and Authorities.

19 First, during the mandatory conference, Ticketmaster's counsel claimed his
20 only basis for seeking this request was for the purpose of adding additional
21 defendants to this action. When RMG's counsel informed Ticketmaster's counsel
22 that the time had lapsed to add additional defendants, Ticketmaster's counsel then
23 claimed that the information it sought was needed so that Ticketmaster could file
24 entirely new claims against said individuals or entities. RMG's counsel then
25 explained that by that very definition, the documents it therefore was seeking were
26 irrelevant to this action. Ticketmaster's counsel failed to provide any other basis
27 for requesting these documents. Thus, he conceded that this was the only basis for
28 seeking said documents

1 Second, RMG stands by its relevancy objection as the sources of revenue
2 used to buy tickets are not relevant to any of the claims or defenses to this action.

3 c. Proposed Resolutions During the Conference of Counsel

4 (1) Ticketmaster's Proposed Resolution.

5 At the mandatory conference of counsel, counsel for Ticketmaster suggested
6 that RMG produce responsive documents. (Knight Decl. at ¶ 27.) In response,
7 counsel for RMG reiterated RMG's position that this request is irrelevant, as its
8 only relevance, in his view, would be to identify additional defendants, but the time
9 to add additional defendants in this case has lapsed. (*Id.*) Counsel for RMG stated
10 further that it has already produced the records for the 125 instances in which RMG
11 purchased tickets on www.ticketmaster.com and RMG will not produce the source
12 of the funds used to make those purchases. (*Id.*)

13 (2) RMG's Proposed Resolution.

14 Counsel for Ticketmaster only asserted a single basis for requesting this
15 information. Accordingly, RMG's counsel maintained his objection and
16 Ticketmaster failed to provide any other basis for seeking this request.

17 **6. Document Request No. 27.**

18 REQUEST FOR PRODUCTION OF DOCUMENTS NO.: 27

19 All Communications between You and any ISP.

20 RESPONSE TO REQUEST FOR PRODUCTION OF
21 DOCUMENTS NO.: 27

22 Responding Party objects to this request as exceeding
23 permissible discovery, as it is irrelevant to the issues in the
24 instant matter. Responding Party objects to this request as it is
overbroad. Responding Party objects to this request as it is
burdensome and oppressive.

25 a. Ticketmaster's Contentions and Points and Authorities.

26 The Federal Rules permit Ticketmaster to propound discovery that relates to
27 "any matter, not privileged, that is relevant to the claim or defense of that party."
28 Fed.R.Civ.P. 26(b)(1). "It is a common principle that the rules of discovery are to

1 be broadly and liberally construed so as to permit the discovery of any information
 2 which is relevant and is reasonably calculated to lead to the discovery of admissible
 3 evidence.” *Willis*, 2007 WL 2455873, *2. This request seeks communications
 4 between RMG and any ISP. RMG contends that the request seeks irrelevant
 5 information. However, communications between RMG and ISPs likely contain
 6 admissions and other information regarding RMG’s business and products – in
 7 particular, RMG’s statements regarding its actual or intended use of Internet service
 8 to access ticketmaster.com. In any event, the requested documents are reasonably
 9 calculated to lead to the discovery of admissible evidence and should be produced.

10 b. RMG’s Contentions and Points and Authorities.

11 After meeting and conferring, RMG will supplement this response and
 12 provide further documents.

13 c. Proposed Resolutions During the Conference of Counsel

14 (1) Ticketmaster’s Proposed Resolution.

15 At the mandatory conference of counsel, counsel for RMG indicated that the
 16 request is overly broad because “communications” with an ISP might include every
 17 single time one of its computers accessed any webpage utilizing the service of an
 18 ISP. (Knight Decl. ¶ 28.) In response, counsel for Ticketmaster offered to narrow
 19 this request to communications with the proprietors of ISPs, thereby distinguishing
 20 the electronic communications between machines and communications between the
 21 human representative of RMG and human representatives of ISPs. (*Id.*) Counsel
 22 for RMG indicated that he would confer with his client regarding providing
 23 documents responsive to the narrowed request. (*Id.*) Given the approaching
 24 discovery cut-off in this matter, counsel for Ticketmaster could only grant RMG
 25 until March 7, 2008, to provide a supplemental response. (*Id.*) To date, RMG still
 26 has not provided a supplemental response. (*Id.*)

27 (2) RMG’s Proposed Resolution.

28 RMG’s counsel proposed to confer with RMG regarding providing a further

1 response. RMG will provide a further response.

2 **E. RMG's Objections Based on Overbreadth (Document Request Nos. 14,**
 3 **60 and 61).**

4 REQUEST FOR PRODUCTION OF DOCUMENTS NO.: 14

5 All Communications with any Person regarding Ticketmaster or
 6 Tickets purchased through Ticketmaster.

7 RESPONSE TO REQUEST FOR PRODUCTION OF
 8 DOCUMENTS NO.: 14

9 Responding Party objects to this request to the extent that it
 10 seeks all communications regarding Ticketmaster as
 11 burdensome, oppressive and overbroad and is beyond the scope
 12 of permissible discovery. Notwithstanding Responding Party's
 13 objections, Responding Party will comply with this request to
 14 the extent that it seek communications regarding Tickets
 15 purchased.

16 REQUEST FOR PRODUCTION OF DOCUMENTS NO.: 60

17 All Communications between You and any other Person
 18 regarding this lawsuit.

19 RESPONSE TO REQUEST FOR PRODUCTION OF
 20 DOCUMENTS NO.: 60

21 Responding Party objects to this request as it is overbroad,
 22 irrelevant and beyond the scope of permissible discovery.
 23 Responding Party objects to this request as it seeks information
 24 beyond the scope of permissible discovery that is not relevant to
 25 the issues in the instant lawsuit. Responding Party objects to
 26 this request as it is propounded for no reason other than to
 27 harass and annoy. Responding Party objects to this request to
 28 the extent that it seeks information protected by the attorney-
 client privilege. Privilege log will be provided.

REQUEST FOR PRODUCTION OF DOCUMENTS NO.: 61

All Communications between You and any other Person
 regarding any lawsuit brought by Ticketmaster in the U.S.
 District Court, Central District of California.

RESPONSE TO REQUEST FOR PRODUCTION OF
DOCUMENTS NO.: 61

Responding Party objects to this request as it seeks information
 beyond the scope of permissible discovery that is not relevant to
 the issues in the instant lawsuit. Responding Party objects to
 this request as it is propounded for no reason other than to
 harass and annoy. Responding Party objects to this request as it
 seeks information which is not relevant to this action.
 Responding Party objects to this request to the extent that it

1 seeks information protected by the attorney-client privilege.
 2 Privilege log will be provided.

3 **1. Ticketmaster's Contentions and Points and Authorities.**

4 RMG's objections that these requests are overly broad are not well-taken, as
 5 the requests are narrowly drafted. A party's e-mail communications relating to
 6 claims or defenses are a proper subject for a Rule 34 request. *Rowe Entertainment*,
 7 205 F.R.D. at 428. Even if the requests were overly broad, RMG was required to
 8 respond to the non-objectionable portion of each such request and to identify the
 9 sources of responsive documents not reasonably accessible. *See* Fed.R.Civ.P.
 10 34(b).

11 Even when undue burden or cost is demonstrated, if the requesting party
 12 shows "good cause" (i.e., that the need for discovery outweighs the burdens and
 13 costs of producing it), the court may order electronically-stored information
 14 produced on specified terms and conditions. Schwarzer, Tashima & Wagstaffe, ch.
 15 11(IV)-C, ¶ 11:1857, at 11-222.5; Fed.R.Civ.P. 26(b)(2)(B). Here, the need for the
 16 information requested far outweighs RMG's burden and costs of producing it.
 17 Ticketmaster's prosecution of its claims against RMG would suffer actual and
 18 substantial prejudice from RMG's withholding of the documents sought by these
 19 request, as the requested communications are highly relevant to Ticketmaster's
 20 claims and likely contain highly relevant information and admissions.

21 Moreover, RMG is not excused from producing relevant non-privileged
 22 documents simply because it possesses an extremely large number of
 23 communications regarding Ticketmaster or tickets purchased through Ticketmaster,
 24 for example. RMG should be compelled to produce those responsive documents
 25 that were capable of being produced without undue burden. In addition,
 26 Ticketmaster is willing to cooperate with RMG and the Court to minimize the
 27 physical burden of producing large numbers of documents.

28 With respect to Request No. 14, RMG responded that it "will comply with

1 this request to the extent that it seek communications regarding Tickets purchased.”
2 However, this request is not limited to communications regarding tickets purchased
3 and RMG should be compelled to produce those communications regarding
4 Ticketmaster in general, which can be produced without undue burden. It is simply
5 not plausible that there are no such documents that could be produced without
6 undue burden.

7 With respect to Request Nos. 60 and 61, RMG asserted the attorney-client
8 privilege. However, any communications between RMG and persons other than its
9 attorneys and their staff regarding this lawsuit or other lawsuits brought by
10 Ticketmaster in the U.S. District Court, Central District of California should be
11 produced.

12 **2. RMG’s Contentions and Points and Authorities.**

13 First, notwithstanding Ticketmaster’s conclusory, self-serving statement that
14 the above requests are not overbroad, the plain language of each request
15 demonstrates otherwise.

16 Specifically, request No. 14 asks for *all* communications with *any* person
17 regarding Ticketmaster or Tickets purchased through Ticketmaster. This request is
18 so overbroad that should the court grant this request, it would effectively eliminate
19 a need to respond to nearly every other request propounded by Ticketmaster.
20 Moreover, this request, as drafted, seeks documents that have absolutely nothing to
21 do with the claims or defenses in this matter. Further, RMG also objected to this
22 request on the grounds that as drafted it was burdensome and oppressive to produce
23 said documents. Moreover, should Ticketmaster have sought documents relating to
24 this case it should have specified only documents that are related to the claims and
25 defenses in this matter; however it failed to do so. Accordingly this request is
26 overbroad, unduly burdensome and oppressive.

27 First, request No. 60, which seeks all documents that reflect communications
28 between RMG and any person regarding this lawsuit, is clearly overbroad. It

specifically, does not request communications regarding claims or defenses to this action. Rather Ticketmaster is requesting any communications, that could have absolutely nothing to do with the subject matter of this action. Thus, this request is overbroad.

Second, Request No. 61 also request all communications between RMG and any Person regarding *any* lawsuit filed by Ticketmaster in the U.S. District Court, Central District of California. Notwithstanding the utter lack of relevancy to the claims and defenses to this action, it is also, as drafted, entirely overbroad. Specifically, RMG would be required to produce documents from any person who it may have communicated with regardless of whether it has anything to do with this case. There is simply no rule under the Federal Rules of Civil Procedure that entitles a party to seek such an overbroad request.

3. Proposed Resolutions During the Conference of Counsel.

a. Ticketmaster's Proposed Resolution.

At the mandatory conference of counsel, counsel for Ticketmaster offered to modify Request No. 14 to eliminate the use of the defined term "Tickets." (Knight Decl. ¶ 29.) Counsel for Ticketmaster also reiterated its contention that Request Nos. 60 and 61 are not limited to communications involving attorneys and their support staff, and, thus, to the extent RMG possesses responsive communications with others, those documents should be produced. (*Id.*) Counsel for RMG indicated that he would confer with his client regarding the production of responsive documents consistent with the modified and clarified requests. (*Id.*) Given the approaching discovery cut-off in this matter, counsel for Ticketmaster could only grant RMG until March 7, 2008, to provide a supplemental response. (*Id.*) To date, RMG still has not provided a supplemental response. (*Id.*)

b. RMG's Proposed Resolution.

RMG's counsel offered to consult with his client with respect to amending request No. 14. With respect to request Nos. 60 and 61 RMG and Ticketmaster's

counsel could not reach an agreement.

F. RMG's Failure to Produce Documents It Indicated It Would Produce In Its Supplemental Responses (Document Request Nos. 1, 2, 10, 15, 16, 17, 20, 21, 22, 23, 24, 40, 42, 43, 44, 45, 46, 47, 49, 51, 52, 53, 55, and 59).

REQUEST FOR PRODUCTION OF DOCUMENTS NO.: 1

All Documents relating to every purchase by You of tickets.

RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS NO.: 1

Responding party objects to this request as being overbroad, burdensome and oppressive. Responding party objects to this Request to the extent that it seeks information already in the possession, custody and control of Asking party, which would be any credit card statement reflecting the purchase of tickets, or invoice or receipt for said sale, as Ticketmaster already has said credit card information in its system due to the fact that tickets were purchased from ticketmaster.com, and same can be retrieved via matching of the order numbers set forth on the records provided by Responding Party. Notwithstanding these objections, Responding Party will comply with this request and produce all other records in its possession, custody and control which reflect its purchase of tickets.

REQUEST FOR PRODUCTION OF DOCUMENTS NO.: 2

All Documents relating to Your decision for which particular events to buy Tickets.

RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS NO.: 2

Responding party does not have any records which reflect its decisions in purchasing tickets, other than the records of the actual purchase of tickets. Responding party objects to this request as being overbroad, burdensome and oppressive. Responding party objects to this Request to the extent that it seeks information already in the possession, custody and control of Asking party, which would be any credit card statement reflecting the purchase of tickets, or invoice or receipt for said sale, as Ticketmaster already has said credit card information in its system due to the fact that tickets were purchased from ticketmaster.com, and same can be retrieved via matching of the order numbers set forth on the records provided by Responding Party. Notwithstanding these objections, Responding Party will comply with this request and produce all other records in its, possession, custody and control which reflect its purchase of tickets.

REQUEST FOR PRODUCTION OF DOCUMENTS NO.: 10

1 All Documents relating to all methods You used to purchase
2 Tickets.

3 RESPONSE TO REQUEST FOR PRODUCTION OF
4 DOCUMENT NO.: 10

5 Responding Party objects to this request as to the term
6 "methods" as it is vague and ambiguous. [However, the only
7 method utilized by Responding Party were the purchasing
8 Tickets through the Ticketmaster website.] Responding Party
9 will produce all documents in its possession, custody and
10 control which reflect purchases it made through the
11 Ticketmaster website.

12 REQUEST FOR PRODUCTION OF DOCUMENTS NO.: 15

13 All Documents regarding Ticketmaster or Tickets purchased
14 through Ticketmaster.

15 RESPONSE TO REQUEST FOR PRODUCTION OF
16 DOCUMENTS NO.: 15

17 Responding Party objects to this request to the extent that it
18 seeks all documents regarding Ticketmaster as burdensome,
19 oppressive and overbroad and is beyond the scope of
20 permissible discovery. Responding party objects to this Request
21 to the extent that it seeks information already in the possession,
22 custody and control of Asking party, which would include, but
23 not be limited to any credit card statement reflecting the
24 purchase of tickets, or invoice or receipt for said sale, as
25 Ticketmaster already has said credit card information in its
26 system due to the fact that tickets were purchased from
27 ticketmaster.com, and same can be retrieved via matching of the
28 order numbers set forth on the records provided by Responding
Party. Notwithstanding these objections, Responding Party will
comply with this request and produce all other records in its
possession, custody and control that are responsive to this
request.

REQUEST FOR PRODUCTION OF DOCUMENTS NO.: 16

All Communications to or from Ticketmaster.

RESPONSE TO REQUEST FOR PRODUCTION OF
DOCUMENTS NO.: 16

Responding Party objects to this request as it is vague,
ambiguous and overbroad. Responding Party objects to this
request as the information sought would equally be in the
possession, custody, or control of Asking Party. Responding
party objects to this Request to the extent that it seeks
information already in the possession, custody and control of
Asking party, which would be any credit card statement
reflecting the purchase of tickets, or invoice or receipt for said
sale, as Ticketmaster already has said credit card information in

its system due to the fact that tickets were purchased from ticketmaster.com, and same can be retrieved via matching of the order numbers set forth on the records provided by Responding Party. Notwithstanding these objections, and subject thereto, Responding Party will comply with this request.

REQUEST FOR PRODUCTION OF DOCUMENTS NO.: 17

All Documents relating to and sufficient to identify all Persons, including but not limited to ticket brokers or resellers, with whom you communicated about Tickets purchased through Ticketmaster.

RESPONSE TO REQUEST FOR PRODUCTION NO.: 17

Responding Party objects to this request as it is beyond the scope of permissible discovery. Responding Party objects to this request as it is overbroad. Notwithstanding Responding Party's objections, all documents responsive hereto will be produced.

REQUEST FOR PRODUCTION OF DOCUMENTS NO.: 20

All Documents relating to and sufficient to identify the name of every Person who purchased Tickets using Your technology.

RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS NO.: 20

Responding Party objects to this request as vague and ambiguous as to the term "Your technology." Responding party objects to this Request to the extent that it seeks information already in the possession, custody and control of Asking party, which would be any credit card statement reflecting the purchase of tickets, or invoice or receipt for said sale, as Ticketmaster already has said credit card information in its system due to the fact that Tickets were purchased from ticketmaster.com, and same can be retrieved via matching of the order numbers set forth on the records provided by Responding Party. Notwithstanding the foregoing objection, Responding Party will produce all documents which are responsive to this request.

REQUEST FOR PRODUCTION OF DOCUMENTS NO.: 21

All Documents relating to every credit card used by You, on Your behalf, or by Your clients to purchase Tickets.

RESPONSE TO Request FOR PRODUCTION OF DOCUMENTS NO.: 21

Responding Party objects to this request as exceeding permissible discovery, as it is irrelevant to the issues in the instant matter. Responding Party objects to this Request to the extent that it seeks information already in the possession,

1 custody and control of Asking Party, which would be any credit
 2 card statement reflecting the purchase of tickets, or invoice or
 3 receipt for said sale, as Ticketmaster already has said credit card
 4 information in its system due to the fact that Tickets were
 5 purchased from ticketmaster.com, and same can be retrieved via
 6 matching of the order numbers set forth on the records provided
 7 by Responding Party. Notwithstanding the foregoing objection,
 8 Responding Party will produce all other documents which are
 9 responsive to this request.

10 REQUEST FOR PRODUCTION OF DOCUMENTS NO.: 22

11 All Documents relating to and sufficient to identify every name
 12 used by You, on Your behalf, or by Your clients to purchase
 13 Tickets.

14 RESPONSE TO REQUEST FOR PRODUCTION OF 15 DOCUMENTS NO.: 22

16 Responding Party objects to this request as exceeding
 17 permissible discovery, as it is irrelevant to the issues in the
 18 instant matter. Responding Party objects to this Request to the
 19 extent that it seeks information already in the possession,
 20 custody and control of Asking Party, which would be any credit
 21 card statement reflecting the purchase of tickets, or invoice or
 22 receipt for said sale, as Ticketmaster already has said credit card
 23 information in its system due to the fact that Tickets were
 24 purchased from ticketmaster.com, and same can be retrieved via
 25 matching of the order numbers set forth on the records provided
 26 by Responding Party. Notwithstanding the foregoing objection,
 27 Responding Party will produce all other documents which are
 28 responsive to this request.

REQUEST FOR PRODUCTION OF DOCUMENTS NO.: 23

All Documents relating to and sufficient to identify every
 physical address used by You, on Your behalf, or by Your
 clients to purchase Tickets.

RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS NO.: 23

Responding Party objects to this request as exceeding
 permissible discovery, as it is irrelevant to the issues in the
 instant matter. Responding Party objects to this Request to the
 extent that it seeks information already in the possession,
 custody and control of Asking Party, which would be any credit
 card statement reflecting the purchase of Tickets, or invoice or
 receipt for said sale, as Ticketmaster already has said credit card
 information in its system due to the fact that Tickets were
 purchased from ticketmaster.com, and same can be retrieved via
 matching of the order numbers set forth on the records provided
 by Responding Party. Notwithstanding the foregoing objection,
 Responding Party will produce all other documents which are
 responsive to this request.

REQUEST FOR PRODUCTION OF DOCUMENTS NO.: 24

All Documents relating to and sufficient to identify every email address used by You, on Your behalf, or by Your clients to purchase Tickets.

RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS NO.: 24

Responding Party objects to this request as exceeding permissible discovery, as it is irrelevant to the issues in the instant matter. Responding Party objects to this Request to the extent that it seeks information already in the possession, custody and control of Asking Party, which would be any credit card statement reflecting the purchase of tickets, or invoice or receipt for said sale, as Ticketmaster already has said credit card information in its system due to the fact that Tickets were purchased from ticketmaster.com, and same can be retrieved via matching of the order numbers set forth on the records provided by Responding Party. Notwithstanding the foregoing objection, Responding Party will produce all other documents which are responsive to this request.

REQUEST FOR PRODUCTION OF DOCUMENTS NO.: 40

All Documents relating to and sufficient to identify all Persons who are or have been employed by You from January 1, 2001 to present.

RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS NO.: 40

Responding Party will comply with this request.

REQUEST FOR PRODUCTION OF DOCUMENTS NO.: 42

All Documents relating to the function, ownership, and maintenance of corporate existence of RMG, including articles of incorporation, minutes, resolutions, etc.

RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS NO.: 42

Responding Party will comply with this request.

REQUEST FOR PRODUCTION OF DOCUMENTS NO.: 43

All Documents relating to the function, ownership, and maintenance of corporate existence of Ticket Broker Tools, Inc., including articles of incorporation, minutes, resolutions, etc.

RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS NO.: 43

Responding Party will comply with this request.

REQUEST FOR PRODUCTION OF DOCUMENTS NO.: 44

All Documents relating to and sufficient to identify all of Your officers and directors.

RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS NO.: 44

Responding Party will comply with this request.

REQUEST FOR PRODUCTION OF DOCUMENTS NO.: 45

All Documents relating to and sufficient to identify all of Your shareholders.

RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS NO.: 45

Responding Party will comply with this request.

REQUEST FOR PRODUCTION OF DOCUMENTS NO.: 46

All Documents relating to all Internet Protocol ("IP") addresses You have registered in the name of RMG, Ticket Broker Tools, Inc., or in the name of any of Your prior or affiliated businesses, employees' names, or in the name of any other Person(s) acting for Your benefit or on Your behalf.

RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS NO.: 46

Responding Party will comply with this request.

REQUEST FOR PRODUCTION OF DOCUMENTS NO.: 47

All Documents relating to all IP addresses registered by You for the use of Your clients.

RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS NO.: 47

Responding Party will comply with this request.

REQUEST FOR PRODUCTION OF DOCUMENTS NO.: 49

All Documents relating to all web pages viewable on www.ticketbrokertools.com.

REQUEST FOR PRODUCTION OF DOCUMENTS NO.: 49

Responding Party will comply with this request.

REQUEST FOR PRODUCTION OF DOCUMENTS NO.: 51

1 All Documents relating to all html and other computer code
2 needed to create www.ticketbrokertools.com, or which is
3 accessible from that website.

4 RESPONSE TO REQUEST FOR PRODUCTION OF
5 DOCUMENTS NO.: 51

6 Responding Party will comply with this request.

7 REQUEST FOR PRODUCTION OF DOCUMENTS NO.: 52

8 All Documents relating to all html and other computer code
9 needed to create <http://tbat.ticketbrokertools.com>, or which, is
10 accessible from that website.

11 RESPONSE TO REQUEST FOR PRODUCTION OF
12 DOCUMENTS NO.: 52

13 Responding Party will comply with this request.

14 REQUEST FOR PRODUCTION OF DOCUMENTS NO.: 53

15 All Documents relating to every visitor to
16 www.ticketbrokertools.com from January 1, 2001 to present.

17 RESPONSE TO REQUEST FOR PRODUCTION OF
18 DOCUMENTS NO.: 53

19 Responding Party objects to this request as being vague,
20 ambiguous and overbroad. Subject to the foregoing objection,
21 Responding Party will comply with this request by producing
22 the access logs to www.ticketbrokertools.com.

23 REQUEST FOR PRODUCTION OF DOCUMENTS NO.: 55

24 All Documents relating to all advertising, promotion, or
25 marketing of all products or services described in MPI Exh. 1, in
26 any form, context or medium.

27 RESPONSE TO REQUEST FOR PRODUCTION OF
28 DOCUMENTS NO.: 55

Responding Party will comply with this request.

REQUEST FOR PRODUCTION OF DOCUMENTS NO.: 59

All Documents relating to every Internet Protocol ("IP") address
used by You, Your customers, or on Your behalf to purchase
Tickets.

RESPONSE TO REQUEST FOR PRODUCTION OF
DOCUMENTS NO.: 59

Responding Party will comply with this request.

1 **1. Ticketmaster's Contentions and Points and Authorities.**

2 In its supplemental responses to Request Nos. 1, 2, 10, 15, 16, 17, 20, 21, 22,
3 23, 24, 40, 42, 43, 44, 45, 46, 47, 49, 51, 52, 53, 55, and 59, RMG indicated that it
4 would comply with the requests and produce responsive documents. These
5 supplemental responses are in contrast to RMG's supplemental responses to
6 numerous other requests for which RMG stated it would not comply, or for which
7 RMG stated that no additional document existed. On January 29, 2008, Chandra
8 Richards McLaughlin of Coggan and Tarlow, counsel for RMG, sent an email to
9 Mark Lee and Alison White, counsel for Ticketmaster, attaching RMG's
10 supplemental responses, and stating that "[d]ocuments will be sent under separate
11 cover." (*Id.*, Ex. A.) However, Ticketmaster never received such documents. (*Id.*)

12 It was not until the March 5, 2008 mandatory meeting of counsel, over a
13 month later, that despite its numerous responses that it would produce additional
14 documents, and despite Ms. McLaughlin's January 29 email sent on RMG's behalf,
15 RMG claimed that no additional documents existed. (*Id.*, ¶ 11.) It is highly
16 unlikely that RMG's counsel incorrectly believed that additional documents existed
17 and would be forthcoming with respect to two dozen document requests (after-all,
18 RMG clearly knows how to communicate to its counsel that no documents exist in
19 response to a given request). Instead, it is more likely that RMG's refusal to
20 cooperate with Ticketmaster has resulted in the withholding or destruction of
21 responsive documents that it initially intended to produce.

22 Parties to an action have a general duty not to destroy documents relevant to
23 pending litigation. In this instance, however, the Court went so far as to issue an
24 evidence preservation order to prevent the destruction or deletion of relevant
25 electronically stored information. Thus, it would be especially egregious to learn
26 that RMG has destroyed relevant documents that it initially indicated it would
27 produce.
28

1 **2. RMG's Contentions and Points and Authorities.**

2 RMG vehemently disputes Ticketmaster's implication that it has either
3 withheld or destroyed documents. Ticketmaster's counsel is asserting such
4 accusations without any facts to support this claim.

5 At the time that RMG stated it would provide further documents, it made a
6 good faith response that it believed it had additional responsive documents.
7 However, after a diligent search, RMG concluded that all responsive documents
8 had already been produced pursuant to the Court's expedited discovery order and
9 RMG's response to Ticketmaster's request for documents.

10 At the meeting of counsel on March 5, 2008, RMG's counsel represented
11 that that RMG had done a diligent search and that no other documents would be
12 produced. There was simply nothing untoward in RMG's response.

13 Finally, after reviewing this stipulation, it is apparent that RMG inadvertently
14 failed to produce documents responsive to Request No. 49. Accordingly, with
15 respect to No. 49, said documents will be produced immediately.

16 **3. Proposed Resolutions During the Conference of Counsel.**

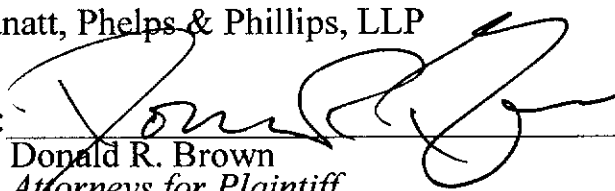
17 a. Ticketmaster's Proposed Resolution.

18 At the mandatory conference of counsel, counsel for Ticketmaster inquired
19 into the whereabouts of the documents that RMG indicated it would produce.
20 (Knight Decl. ¶ 11.) Counsel for RMG indicated that at the time his office stated
21 that responsive documents would be forthcoming, he was under the erroneous
22 belief that RMG possessed additional responsive documents. (*Id.*) Counsel for
23 Ticketmaster requested that counsel for RMG double-check with RMG regarding
24 whether or not it possess additional responsive documents. (*Id.*) Counsel for RMG
25 indicated that he would double-check. (*Id.*) Given the approaching discovery cut-
26 off in this matter, counsel for Ticketmaster could only grant RMG until March 12,
27 2008, to provide a supplemental response. (*Id.*) To date, RMG still has not
28 provided any additional documents. (*Id.*)

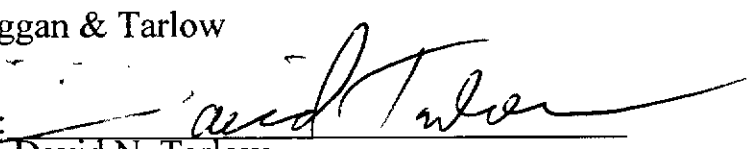
b. RMG's Proposed Resolution.

RMG's counsel offered to confer with his client and if appropriate, provide a supplemental response.

Dated: March ²⁴~~20~~, 2008 Manatt, Phelps & Phillips, LLP

By: 
Donald R. Brown
Attorneys for Plaintiff
TICKETMASTER L.L.C.

Dated: March 20, 2008 Coggan & Tarlow

By: 
David N. Tarlow
Attorneys for Defendant
RMG TECHNOLOGIES, INC.